S. HRG. 100-983

SETTLEMENT OF THE WATER CLAIMS OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY IN MARICOPA COUNTY, ARIZONA

JOINT HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2153

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, AZ

AND

H.R. 4102

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, AZ

MARCH 24, 1988
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
87-937 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H441-17
S411-17

SELECT COMMITTEE ON INDIAN AFFAIRS

DANIEL K. INOUYE, Hawaii, *Chairman*
DANIEL J. EVANS, Washington, *Vice Chairman*

JOHN MELCHER, Montana
DENNIS DeCONCINI, Arizona
QUENTIN N. BURDICK, North Dakota
THOMAS A. DASCHLE, South Dakota

FRANK H. MURKOWSKI, Alaska
JOHN McCAIN, Arizona

Alan R. Parker, *Staff Director*
Patricia M. Zell, *Chief Counsel*
Joe Mentor, Jr., *Minority Counsel*

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

House of Representatives

MORRIS K. UDALL, Arizona, *Chairman*

GEORGE MILLER, California
PHILIP R. SHARP, Indiana
EDWARD J. MARKEY, Massachusetts
AUSTIN J. MURPHY, Pennsylvania
NICK JOE RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
JERRY HUCKABY, Louisiana
DALE E. KILDEE, Michigan
TONY COELHO, California
BEVERLY B. BYRON, Maryland
RON de LUGO, Virgin Islands
SAM GEJDENSON, Connecticut
PETER H. KOSTMAYER, Pennsylvania
RICHARD H. LEHMAN, California
BILL RICHARDSON, New Mexico
FOFO I.F. SUNIA, American Samoa
GEORGE (BUDDY) DARDEN, Georgia
PETER J. VISCLOSKY, Indiana
JAMIE B. FUSTER, Puerto Rico
MEL LEVINE, California
JAMES McCLURE CLARKE, North Carolina
WAYNE OWENS, Utah
JOHN LEWIS, Georgia
BEN NIGHTHORSE CAMPBELL, Colorado
PETER A. DeFAZIO, Oregon

DON YOUNG, Alaska, *Ranking Republican Member*
MANUEL LUJAN, Jr., New Mexico
ROBERT J. LAGOMARSINO, California
RON MARLENEE, Montana
DICK CHENEY, Wyoming
CHARLES PASHAYAN, Jr., California
LARRY CRAIG, Idaho
DENNY SMITH, Oregon
JAMES V. HANSEN, Utah
BILL EMERSON, Missouri
BARBARA F. VUCANOVICH, Nevada
BEN BLAZ, Guam
JOHN J. RHODES III, Arizona
ELTON GALLEGLY, California
RICHARD BAKER, Louisiana

Stanley Scoville, *Staff Director and Counsel*
Roy Jones, *Associate Staff Director and Counsel*
Lee McElvain, *General Counsel*
Franklin Ducheneaux, *Counsel on Indian Affairs*
Angela McCoy, *Secretary*
Richard A. Agnew, *Chief Minority Counsel*
Gregg A. Houtz, *Minority Counsel on Indian Affairs*

CONTENTS

Page
S. 2153 and H.R. 4102, text of 2

Statements:

Anton, Gerald, president, Salt River Pima-Maricopa Indian Community Council 70
Antone, Alfretta, vice president, Salt River Pima-Maricopa Indian Community Council 71
Brooks, Al, mayor, Mesa, AZ 76
Campbell, Hon. Ben Nighthorse, U.S. Representative from Colorado 57
Choules, Tom, attorney, Wellton-Mohawk Irrigation and Drainage District 92
Clark, Thomas C., general manager, Central Arizona Water Conservation District 84
DeConcini, Hon. Dennis, U.S. Senator from Arizona 55
Dobson, Mark, president, Roosevelt Water Conservation District 82
Dugan, Richard, mayor, Chandler, AZ 77
Falbo, Joe, councilman, Tucson, AZ 79
Farley, James, mayor, Mesa, AZ 78
Gould, Clyde L., general manager, Wellton-Mohawk Irrigation and Drainage District 90
Heiden, W. Bruce, director, Roosevelt Irrigation District 84
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Select Committee on Indian Affairs 1
Kyl, Hon. Jon, U.S. Representative from Arizona 59
Lassen, John, president, Salt River Project 81
Marcus, Janet, councilwoman, Tucson, AZ 80
McCain, Hon. John, U.S. Senator from Arizona 56
Mitchell, Harry, mayor, Tempe, AZ 75
Pretzer, Norman, president, Central Arizona Irrigation and Drainage District 89
Rhodes, Hon. John J. III, U.S. Representative from Arizona 57
Smith, John, president, Maricopa-Stanfield Irrigation District 87
Wilcox, Mary Rose, vice mayor, Phoenix, AZ 78
Ziglar, James W., Assistant Secretary for Water and Science, Department of the Interior, Washington, DC 60

APPENDIX

Prepared statements:

Anton, Gerald 102
Arizona Cities 115
Choules, Tom (with attachments) 201
Clark, Thomas C. (with attachments) 148
DeConcini, Hon. Dennis, U.S. Senator from Arizona (with letter) 281
Dobson, Mark 133
Drinkwater, Herb, mayor, Scottsdale, AZ 301
Falbo, Joe 122
Gould, Clyde L. (with attachments) 201
Heiden, W. Bruce (with attachments) 139
Kolbe, Hon. Jim, U.S. Representative from Arizona 113
Kyl, Hon. Jon, U.S. Representative from Arizona (with letter) 288
Lassen, John 125
Mofford, Rose, Acting Governor, Arizona 180
Pretzer, Norman (with brief) 188, 191
Rhodes, Hon. John J. III, U.S. Representative from Arizona (with letters) 292

Page

Prepared statements—Continued

- Smith, John, (with brief) 184, 191
- Stump, Hon. Bob, U.S. Representative from Arizona 300
- Ziglar, James W 95

Additional material submitted for the record

- Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement 219

SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE SALT RIVERPIMA-MARICOPA INDIAN COMMUNITY IN MARICOPA COUNTY, AZ

THURSDAY, MARCH 24, 1988

U.S. SENATE, SELECT COMMITTEE ON INDIAN AFFAIRS,
MEETING JOINTLY WITH COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS, HOUSE OF REPRESENTATIVES
Washington, DC.

The committees met, pursuant to notice, at 9:40 a.m., in room 1324, Longworth House Office Building, Senator Daniel K. Inouye (chairman of the Select Committee on Indian Affairs) presiding.

Present from the Committee on Interior and Insular Affairs: Representatives Udall, Rhodes, Campbell, and Kyl.

Present from the Select Committee on Indian Affairs: Senators Inouye, DeConcini, and McCain.

Staff present from the Committee on Interior and Insular Affairs: Michael Jackson, Greg Houtz, and Patricia Velarde.

Staff present from the Select Committee on Indian Affairs: Patricia Zell, chief counsel; Patricia Lynch, professional staff member; and Daniel Lewis, professional staff member.

STATEMENT OF DANIEL K., INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. This morning the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs meet jointly to consider S. 2153 and H.R. 4102, bills to provide for the settlement of water rights claims of the Salt River Pima-Maricopa Indian Community of Arizona.

This settlement culminates many years of negotiations and will provide a firm source of water for the Salt River Indian Community that will allow the community to maintain its traditional farming of tribal lands. Upon the various exchanges authorized in the bill, and the delivery of water to the community, the settlement will provide finality to the tribe's claims as well as an assured source of water to the surrounding communities, irrigation districts, and the Salt River Project.

[Text of H.R. 4102 and S. 2153 follow:]

100TH CONGRESS
2D SESSION

S. 2153

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4 (legislative day, MARCH 2), 1988

Mr. DECONCINI (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) it is the policy of the United States to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation, and to promote Indian self-determination and economic self-sufficiency;

(2) the Salt River Pima-Maricopa Indian Community has asserted claims to its water rights in litigation currently pending in the United States District Court for Arizona and in the United States Court of Claims;

(3) the United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

(4) these extensive and complex lawsuits promise to take years to complete and cause great expense to all participants;

(5) continuation of the litigation without a settlement will ensure that the Community will continue to be deprived of water supplies crucial to the economic development of its reservation homeland and frustrate its members' efforts to achieve meaningful self-determination;

(6) continuation of the litigation without a settlement will continue uncertainty as to availability of water supplies for the adjacent non-Indian communities of the metropolitan Phoenix area and impair their long-term economic planning and development;

(7) after more than 2 years of negotiations the Community and the major non-Federal defendants in the litigation have entered into an agreement providing for the resolution of the water rights claims of the Community and its members for once and always;

(8) the major non-Federal defendants have agreed to transfer rights to approximately 32,000 acre-feet of surface water to the Community and to make substantial additional contributions to settlement of the Community's claims; and

(9) it is in the interest of the United States, as trustee for the Community and as a defendant in the litigation, and of the State of Arizona, its political subdivisions, the Community, and the non-Indian community of the Salt River Valley that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Community.

(b) PURPOSE.—It is the purpose of this Act—

(1) to ratify the agreement entered into by the Community and the non-Federal defendants; and

(2) to authorize the actions and additional appropriations necessary for the United States to fulfill its legal and trust obligations to the Community consistent with that agreement and the provisions of this Act.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "agreement" means that agreement dated February 12, 1988, among the Salt River Pima-Maricopa Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities and Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District, together with all exhibits thereto.

(2) The term "allottees" means owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(3) The term "Bartlett Dam Agreement" means the agreement between the United States and the Salt

River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

(4) The term "Central Arizona Project" means a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.).

(5) The term "Central Arizona Water Conservation District" means the district organized under the laws of the State of Arizona, which is the Contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(6) The term "Community" means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(7) The term "Kent Decree" means the decree dated March 10, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(8) The term "Plan 6" means Plan 6 for the Regulatory Storage Division of the Central Arizona

Project, which for the purposes of the Agreement and this Act is limited to modifications to Roosevelt Dam on the Salt River.

(9) The term "Plan 6 Agreement" means the agreement among the United States; the Central Arizona Water Conservation District; the Flood Control District of Maricopa County; Salt River Project; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the Central Arizona Project, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C and D thereto.

(10) The term "Secretary" means the Secretary of the Interior.

(11) The term "Salt River Project Agricultural Improvement and Power District" means the political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 4. KENT DECREE REREGULATION.

(a) ADDITIONAL CONSERVATION CAPACITY.—The Secretary shall designate 7,000 acre-feet (hereinafter referred to as "Designation Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River Valley previously authorized pursuant to the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 506 et seq.), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), and the relevant provisions relating to "Construction Program" contained in title II of the Act entitled "An Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes" (Public Law 100–202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1.

(b) COSTS.—The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven.

SEC. 5. BARTLETT DAM AGREEMENT.

(a) CONDITIONS FOR INCREASE.—The Secretary shall amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to 20,000 acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) For at least 292 days of the calendar year the total water stored in the Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for purposes of this Act, is deemed to be 178,186 acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) The total Community allotment of developed water under the Bartlett Dam Agreement during the calendar year is less than 7,000 acre-feet; and

(3) The total Community allotment of developed water under the Bartlett Dam Agreement existing at the beginning of the calendar year plus the Community allotment of developed water generated during that calendar year is less than 20,000 acre-feet.

(b) OTHER PROVISIONS UNAFFECTED.—Except as provided in subsection (a), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

SEC. 6. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) PREDECESSOR CORPORATION.—The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Agua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) ROOSEVELT WATER CONSERVATION DISTRICT.—The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed and declared to be valid. The entitlement of the Roosevelt Water Conservation District to water from the Salt River as calculated pursuant to paragraph 10.2 of the Agreement is approved and confirmed.

(c) REVISION OF SUBCONTRACT.—The Secretary shall revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the Central Arizona Project to include an addendum in the form of Exhibit "3.i" to the Agreement. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

SEC. 7. COLORADO RIVER WATER EXCHANGE.

(a) ACQUISITION.—On or before December 31, 1990, the Secretary shall acquire, from willing sellers, 22,000 acre-feet of water from the main stream of the Colorado River in the State of Arizona with a contractual priority pre-dating September 30, 1968, and which was not included by the Secretary, the Arizona Water Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the Central Arizona Project for the purpose of establishing the initial allocations to non-Indian entities.

(b) TERMS OF CONTRACT.—The Secretary shall contract to deliver Colorado River water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix and the Arizona Town of Gilbert, in exchange for water provided by these Cities and the Town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to non-Indian municipal and industrial subcontractors. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to Exhibits "3.h.1" through "3.h.7" to the Agreement, which Exhibits substantially conform to the terms of the Central Arizona Project municipal and industrial water service subcontracts to which each of such Cities and the Town are parties on the effective date of this Act, except that—

(1) capital charges associated with water deliveries made pursuant to the contracts authorized by this section shall be paid to the Secretary and shall not

exceed one-quarter of the capital charges associated with the delivery of municipal and industrial water from the Central Arizona Project to non-Indian subcontractors;

(2) for the purpose of determining the allocation and repayment of reimbursable costs of the Central Arizona Project pursuant to Article 9.3 of Contract No. 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, water delivered to the Cities and the Town pursuant to the contracts authorized by this section shall be treated as water delivered to entities other than the Contractor or Subcontractors; and

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as may be necessary to fulfill the purposes of this section.

(d) RECLAMATION REFORM ACT OF 1982.—Neither the Salt River Valley Water Users' Association nor the Salt

River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including the exchange provided for in this section.

SEC. 8. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) AMENDMENTS TO CONTRACT.—The Secretary shall amend the Central Arizona Project water delivery contract between the United States and the Community dated December 11, 1980 (hereafter in this section referred to as the "Community Central Arizona Project Delivery Contract"), as follows:

(1) to extend the term of such contract to December 30, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties not later than 1 year prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease Central Arizona Project water to be delivered pursuant to the Community's Central Arizona Project Delivery Contract to the City of Phoenix for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to achieve the specific terms and conditions set forth in Exhibit "3.j." to the Agreement. Notwithstanding any other provision of law, the amendments to the Community Central Arizona Project Delivery Contract set forth in Exhibit "3.j." to the Agreement and the terms and conditions of the Project Water Lease set forth in Exhibit "3.m" to the Agreement are hereby authorized, approved, and confirmed.

(b) CHARGES ASSOCIATED WITH WATER DELIVERED TO PHOENIX.—Consistent with subsection (d)(1), the United States shall not impose upon the Community the operation, maintenance, and replacement charges described and set forth in Paragraph 6(B) of the Community's Central Arizona Project Delivery Contract or any other charge with respect to Central Arizona Project water delivered or required to be delivered to the City of Phoenix pursuant to the Community's Central Arizona Project Delivery Contract and the Central Arizona Project water lease to the City of Phoenix herein authorized in this Act.

(c) CHARGES ASSOCIATED WITH WATER DELIVERED TO THE COMMUNITY.—Pursuant to his authority under the Act of July 1, 1931 (25 U.S.C. 386a), the Secretary is directed to adjust Central Arizona Project operation, maintenance, and replacement charges to the Community to an amount equal to the average operation, maintenance, and replacement cost of water delivered to the Community by the Salt River Valley Water Users' Association for a period of 10 years from the date of the first delivery of water under the Community's Central Arizona Project Water Delivery Contract.

(d) LEASE TO CITY OF PHOENIX.—The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2000, and ending December 30, 2098, upon those terms reflected in Exhibit "3.m." to the Agreement, up to 13,300 acre-feet of Central Arizona Project water to be delivered to the Community pursuant to the Community's Central Arizona Project Delivery Contract. This Central Arizona Project water lease shall specifically provide that—

(1) the City of Phoenix shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided,* That such payments shall not be commenced earlier than October 1, 1998; and

(2) capital costs associated with the water delivered pursuant to this subsection shall be nonreimbursable and the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other changes or

payment for such Central Arizona Project water other than the operation, maintenance, and replacement costs set forth in this subsection.

(e) NO SALE OF WATER RECEIVED BY COMMUNITY.—Except as authorized by subsection (d), no water received by the Community pursuant to the settlement and the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

SEC. 9. CONSTRUCTION, REHABILITATION OF RESERVATION FACILITIES.

(a) DESIGN AND CONSTRUCTION AUTHORIZATION.—The Secretary is directed, pursuant to authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.), to design and construct facilities for the delivery of water from the Community's turnout on the Central Arizona Project Granite Reef Aqueduct and from the Arizona Canal to the irrigable Community reservation lands lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement, and to subjugate and level the lands served by such delivery facilities.

(b) REHABILITATION AUTHORIZATION.—The Secretary is directed, pursuant to authority of the Snyder Act of November 21, 1921 (25 U.S.C. 13), to rehabilitate and improve the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement, and to rehabilitate and level the lands served by such delivery facilities.

(c) COMPLIANCE WITH WATER DUTY REQUIREMENTS OF AGREEMENT.—The Secretary shall ensure that the water delivery facilities and improvements referred to in subsections (a) and (b) will be designed, constructed, or rehabilitated so as to be fully capable of providing efficient irrigation of irrigable Community reservation lands at a water duty of 4.5 acre-feet per acre as defined in the Agreement.

(d) ACTIVITIES CONTRACTABLE UNDER INDIAN SELF-DETERMINATION ACT.—All aspects of construction and rehabilitation of water delivery facilities under this section shall be activities contractable under section 104 of the Indian Self-Determination Act (25 U.S.C. 450h).

SEC. 10. CLAIMS EXTINGUISHMENT; PAYMENTS; WAIVERS AND RELEASES.

(a) CLAIMS EXTINGUISHED.—(1) Effective on the date of enactment of this Act, there are hereby extinguished—

(A) all claims of Allottees which are, or which may have been, asserted in Herman Grey et al. v. United States, Docket No. 588-84L, in the United States Court of Claims; and

(B)(i) all claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act; and

(ii) any and all future claims of water rights (including water rights ground water, surface water, and effluent), from and after the effective date of this Act, which such Allottees may have against the United States; the State of Arizona, and any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) The Allottees, individually or as a class, shall be entitled to maintain an action against the United States in the United States Court of Claims pursuant to section 1491 of title 28, United States Code, to recover damages, if any, for the extinguishment of the claims effected by this subsection.

(3)(A) With respect to any claim against the United States which is extinguished by this subsection, the United States may assert as a defense in any action brought pursuant to paragraph (2) the limitation of section 2501 of title 28, United States Code, as to damages incurred more than 6 years before the commencement of the action, but it shall not assert a timeliness defense as to damages incurred within 6 years before the commencement of the action.

(B) With respect to any claim against—

(i) the State of Arizona and any agency or political subdivision thereof; or

(ii) any other person, corporation, or municipal corporation,

which is extinguished by this subsection, the United States may assert as a defense in any action brought pursuant to paragraph (2) any defense which such parties might have asserted in any action brought by the Allottees against them prior to the extinguishment of such claims by this subsection.

(b) WAIVER AND RELEASE.—(1) The Community is authorized, as a part of the performance of its obligations under the Agreement, to execute a waiver and release of—

(A) all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act; and

(B) any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the date of the execution of the waiver and release.

which the Community may have, or which it may have standing to assert on behalf of its members and allottees, against the United States; the State of Arizona, and any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) There is hereby authorized to be appropriated $10,000,000 which, when paid, will be in full and complete satisfaction of all claims of the Community against the United States for failure to deliver water from the Salt and Verde Rivers, and which amount shall be paid into the Trust Fund established pursuant to subsection (c).

(c) TRUST FUND.—(1) As soon as practicable after the date of enactment of this Act, the governing body of the Community shall establish in an appropriate financial institution the Salt River Indian Community Trust Fund (hereinafter referred to as the "Trust Fund") to provide a source of revenue for the purposes of evaluating, planning, administering and constructing water development facilities and for other economic and community development on the Salt River Indian Reservation.

(2) The Trust Fund, principal and income, may be used by the Community, in its discretion, to fulfill the purposes set out in paragraph (1), but no part of such fund may be used to make per capita payments to members of the Community.

(3) There shall be paid into the Trust Fund--

(A) by the Secretary, the $16,000,000 authorized to be appropriated by paragraph (5) of this subsection as full compensation to the Community for its agreement to the stipulations for settlement of pending litigation as described in Paragraph 3.0 of the Agreement; and

(B) by the Secretary, the $10,000,000 authorized to be appropriated by paragraph (2) of subsection (b) of this section in full payment to the Community for its agreement to waive its claims against the United States for failure to deliver water from the Salt and Verde Rivers; and

(C) by the State of Arizona, the $3,000,000 required by paragraph 21.6(c) of the Agreement.

(4) Effective with the payments into the Trust Fund by the Secretary of the amounts required under subparagraphs (A) and (B) of paragraph (3)—

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of monies from the Trust Fund.

(5) There is hereby authorized to be appropriated $16,000,000 to carry out the provisions of paragraph (3)(A).

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) Waiver of Sovereign Immunity.—In the event any party to the Agreement should file a lawsuit in Federal

District Court in Arizona relating to the interpretation or enforcement of the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America or the Community in any such litigation, and any claims by the United States of America or the Community to sovereign immunity from such suit are hereby waived.

(b) GILA RIVER ADJUDICATION.—The Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the general adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereafter in this subsection referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water in the Gala River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water in the Gala River Adjudication or in any other administrative or judicial proceeding.

(c) INAPPLICABILITY OF LAW.—Section 302 of the Colorado River Basin Project Act (43 U.S.C. 1522) shall not apply to the Community.

(d) CLAIMS BY THE UNITED STATES.—The United States shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in response to such costs against such lands.

(e) EFFECT OF WATER RECEIVED ON ALLOCATIONS.—Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not be counted in any future allocation or reallocation of the Central Arizona Project supply.

(f) AUTHORIZATION.—There is hereby authorized to be appropriated such sums as are necessary to reimburse the Community for the amount by which increases in the normal cost per acre-foot of stored water received from the Salt River Valley Water Users' Association, measured each year from the effective date of this Act, exceed the rate of inflation. The rate of inflation shall be measured by the Water Systems Operation and Cost Maintenance Cost Index as computed and published annually by the Bureau of Reclamation, or in the event such ceases to be published, by another suitable index as determined by the Secretary.

(g) RATIFICATION OF AGREEMENT.—The Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed, upon the effective date of this Act, to perform all obligations of the Secretary under the Agreement.

SEC. 12. EFFECTIVE DATE.

(a) CONDITIONS ON EFFECTIVE DATE.—This Act shall not become effective until the following has occurred:

(1) the Secretary has performed all of his obligations under section 7 of this Act;

(2) the Bartlett Dam Agreement has been amended as provided in section 5 of this Act;

(3) the Roosevelt Water Conservation District subcontract for agricultural water service from the Central Arizona Project has been revised and executed as provided in section 6(c) of this Act;

(4) the necessary funds have been appropriated and the Secretary has contracted with the Community to perform the construction and rehabilitation of water delivery facilities pursuant to section 9;

(5) the funds authorized pursuant to sections 7 and 10 have been appropriated; and

(6) the Superior Court of the State of Arizona in and for the County of Maricopa has approved the stipulation which is attached to the Agreement as Exhibit "3.e.".

(b) Effect of Failure To Complete Requirements of Subsection (a).—If the requirements of subsection (a) have not been completed by December 31, 1990—

(1) the amendment to the Bartlett Dam Agreement described in section 5;

(2) the addendum referred to in section 6(c); and

(3) all authorities granted and any contracts or agreements entered into pursuant to section 7 of this Act,

shall be void, and all funds appropriated pursuant to sections 7 and 10 shall revert to the Treasury.

○

100TH CONGRESS
2D SESSION

H. R. 4102

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988

Received; read twice and referred to the Select Committee on Indian Affairs

AN ACT

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

SEC. 2. CONGRESSIONAL FINDINGS.

(a) The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to pro-

mote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency largely depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utlize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 14, 1879, the United States Government established a reservation for the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, at the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910 and the Bartlett Dam Agreement of 1935; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to the water and financial resources necessary to develop its valuable agricultural lands and frustrated

its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) litigation to determine the full extent and nature of the Community's water rights and those of its allotted land owners, and damages thereto, is currently pending before the United States District Court in Arizona and in the United States Claims Court. The United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle their disputes to water and reduce the burdens of litigation;

(8) after more than two years of negotiations, which included participation by representatives of the

United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who all are party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, to provide for the orderly development of the Community's lands, and to prescribe a procedure for resolving such remaining claims which the Community and its allottees may have against the United States;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately thirty-two thousand acre-feet of surface water to the Community, provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its

water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, it is the purpose of this Act (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(a) "Agreement" means that agreement dated February 12, 1988, among the Salt River Pima Maricopa Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto.

(b) "Allottees" means owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(c) "Bartlett Dam Agreement" means the agreement between the United States and the Salt River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

(d) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(e) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(f) "Community" means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(g) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(h) "Plan 6 Agreement" means the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; SRP; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C, and D thereto.

(i) "RID" means the Roosevelt Irrigation District, an irrigation district organized under the laws of Arizona.

(j) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(k) "Secretary" means the Secretary of the United States Department of the Interior.

(l) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

SEC. 4. KENT DECREE REREGULATION.

(a) The Secretary is authorized and directed to designate seven thousand acre-feet (hereinafter referred to as "Designated Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River previously authorized by the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506 et seq.), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), and the relevant provisions relating to "Construction Program" contained in title II of the Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes (Public Law 100-202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1.

(b) The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven.

SEC. 5. BARTLETT DAM AGREEMENT.

(a) The Secretary is directed to amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) for at least two hundred and ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Act, is deemed to be one hundred seventy-eight thousand, one hundred eighty-six acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) the total Community allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than seven thousand acre-feet;

(3) the total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty thousand acre-feet.

(b) Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language: "ARTICLE 4. OPERATION OF STORAGE WORKS 'The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.' ".

(c) Except as provided in subsections (a) and (b), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

SEC. 6. RATIFICATION AND CONFIRMATION OF CONTRACTS.

(a) The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Aqua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed, and declared to be valid.

(c) The Secretary is authorized and directed to revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "3.1" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(d) The Secretary is authorized and directed to execute and perform that agreement among the United States, the CAWCD, the RWCD, the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Arizona town of Gilbert providing for the assignment of a portion of the RWCD's entitlement to agricultural water service from the CAP and other matters in substantially the form of exhibit "12.3" to the Agreement, and such agreement is hereby ratified, confirmed, and declared to be valid.

(e) The Secretary is authorized and directed, at such time as the authorizations in section 10(b)(1) become effective, to certify that the lands within the RWCD are free from the ownership and full cost pricing limitations of Federal reclamation law.

SEC. 7. COLORADO RIVER WATER EXCHANGE.

(a) On or before December 31, 1990, the Secretary shall acquire, from willing irrigation districts and their landowners (hereinafter "sellers"), rights to twenty-two thousand acre-feet of annual consumptive use of water from the main stream of the Colorado River in the State of Arizona with a contractual priority predating September 30, 1968, and which was not included by the Secretary, the Arizona Water Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the CAP for the purpose of establishing the initial allocations to non-Indian entities. Nothing in this Act shall alter the responsibilities of the United States under article V of the March 9, 1964, Decree of the United States Supreme Court in Arizona versus California, 376 U.S. 340.

(b) The Secretary is authorized, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are subject to provide for the discharge of any remaining repayment obligation which the irrigation districts owe the United States as of May 30, 1987, and to certify that the lands within the irrigation districts are free from the ownership and full cost pricing limitations of Federal reclamation law.

(c) The Secretary shall contract to deliver such water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona town of Gilbert, in exchange for water provided by these cities and the town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to CAP non-Indian municipal and industrial subcontractors of CAP water service. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to exhibits "3.h.1" through "3.h.7" to the Agreement, which exhibits substantially conform to the terms of the CAP municipal and industrial water service subcontracts to which each of such cities and the town are parties on the effective date of this Act, except that:

(1) there shall be no water service capital charges associated with water deliveries made pursuant to the contracts authorized by this section, except as otherwise provided in the Agreement,

(2) for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water to cities and the town pursuant to the contracts authorized by this section shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation;

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C.

485h(e)) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

(d) Within one year of the date of enactment of this Act the cities and the town shall deposit $9,000,000 in an escrow account as provided in the Agreement for the purposes of funding the acquisition of the rights to water referred to in subsection (a). On or after the date the waiver referred to in section 10(b)(1) becomes effective, monies shall be paid out of the escrow account to the United States in accordance with the Agreement: *Provided*, That such payment shall not exceed the costs incurred by the Secretary pursuant to subsection (a) or $9,000,000, whichever amount is less. Any monies remaining in escrow account after payment to the United States shall be returned to cities and the town. If the waiver referred to in section 10(b)(1) do not become effective by December 31, 1991, all monies in the escrow account shall be returned to the cities and the town in accordance with the Agreement.

(e) Neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange provided for in this section.

SEC. 8. WATER DELIVERY CONTRACT AMENDMENTS; WATER LEASE.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the Community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Arizona town of Gilbert under the terms and conditions of the Project Water Lease set forth in exhibits "3.m.1" through "3.m.7" to the Agreement for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to perform the specific terms and conditions set forth in exhibit "3.j." to the Agreement.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "3.j." to the Agreement and the terms and conditions of the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement are hereby authorized, approved, and confirmed.

(c) Consistent with subsection (d)(1) of this section, the United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section 7(b) of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the cities and the town pursuant to the Community CAP Delivery Contract and the Project Water Leases herein authorized.

(d) The Community and the Secretary shall lease to the cities and the town, for a term commencing on January 1, 2000, and ending December 30, 2098, and for the total consideration of $16,000,000 to be paid by the cities and the town to the Community, upon those terms reflected in the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement, up to thirteen thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Leases shall specifically provide that—

(1) the cities and the town, each in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided,* That such payments shall not be commenced earlier than October 1, 1998;

(2) except as otherwise provided in the Project Water Leases, the cities and the town shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Leases referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Except as authorized by this section, no water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

SEC. 9. CONSTRUCTION AND REHABILITATION; TRUST FUND.

(a) The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.), to design and construct new facilities for the delivery of water from the Community's turnout on the CAP Granite Reef Aqueduct and from the Arizona Canal to the irrigable Community reservation lands lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement and to irrigable Community reservation lands south of the Arizona Canal at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act;

(2) pursuant to existing authority and obligation of the Snyder Act (25 U.S.C. 13), to deposit into the Community Trust Fund established under subsection (b)(1) $17,000,000 for the rehabilitation and improvement of the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the

Parker Dam Power Project power transmission line easement; and

(3) to deposit into the Community Trust Fund the funds authorized to be appropriated by subsection (c) for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement, to defray the cost to the Community of CAP operation, maintenance and replacement charges, and for other economic and community development on the Salt River Indian Reservation.

(b)(1) As soon as practicable, the Community shall establish the Salt River Community Trust Fund into which shall be deposited—

(A) by the Secretary, the funds provided in paragraphs (2) and (3) of subsection (a), and

(B) by the State of Arizona, $3,000,000 required by paragraph 20.2(b) of the Agreement.

(c) There is hereby authorized to be appropriated $30,470,000 to carry out the provisions of paragraph (3) of subsection (a).

(d) Upon the completion of the actions described in section 12(a), the Trust Fund, principal and income, may be used by the Community, in its discretion, to fulfill the purposes of the Agreement and this Act, but no part of such fund may be used to make per capita payments to members of the Community.

(e) Effective with the payments into the Trust Fund by the Secretary of the amounts required under paragraph (A) of subsection (b)—

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund.

SEC. 10. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a)(1) There are extinguished—

(A) all Allottees' claims against the United States for damages for deprivation of water rights through December 31, 1991;

(B) all Allottees' claims against all persons other than the United States for damages for deprivation of water rights through December 31, 1991, for which damages are not recoverable under subparagraph (a)(1)(A) of this section; and

(C) all rights of Allottees to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including rights to surface water, ground water, and effluent.

(2) For purposes of paragraph (a)(1) of this section claims for water rights include all claims under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(3) The benefits realized by the Allottees under this Act shall constitute full and complete satisfaction of all Allottees' claims for wate: rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) that may accrue after the authorizations contained in paragraph (b)(1) of this section have become effective and which would otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(4) Consent is given to Allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to recover damages, if any, for the extinguishment of claims effected by subparagraphs (a)(1)(A) and (a)(1)(B) of this section: *Provided, however,* That any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section shall not be joined in the same action

as a claim for damages for rights extinguished by subparagraph (a)(1)(A) of this section.

(5) The United States shall have a claim only against the Community for any judgment entered against it in any action for damages for water rights extinguished by subparagraph (a)(1)(B) of this section, and the Community shall not have sovereign immunity with respect to such claim.

(6)(A) With respect to any claim against the United States which is extinguished by subparagraphs (a)(1)(A) and (a)(1)(B), the United States may assert as a defense in any action brought pursuant to paragraph (a)(4) of this section the limitation of section 2501 of title 28, United States Code, as to damages incurred more than six years before the commencement of the action, but it shall not assert a timeliness defense as to damages incurred within six years before the commencement of the action.

(B) With respect to any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section, the United States may assert as a defense any defense which the person whose liability was extinguished might have asserted in an action brought by the Allottees against him prior to the effective date of this Act.

(b)(1) The Community is authorized, as part of the performance of its obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community may have, or which it may have standing to assert on behalf of its members and Allottees, against the United States; the State of Arizona or any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) In any action asserted within two years after the date of enactment of this Act by the Community against the United States in the United States Claims Court for monetary damages based upon loss or impairment of water rights the United States may assert a limitation as to damages incurred more than eight years before the commencement of the action instead of the six year limitation of section 2501 of title 28, United States Code, and it shall not assert a timeliness defense as to damages incurred within eight years before the commencement of the action.

(c) The benefits realized by the Community under this Act shall constitute full and complete satisfaction of all monetary claims against the United States for any damages alleged to accrue after completion of the requirements of section 12(a).

(d) Except as provided in paragraph (a)(5) of this section and paragraphs 17.2 and 17.5 of the Agreement, the United States shall not assert any claim against any person in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community, its members or Allottees; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community, its members or Allottees.

(e) In the event the authorizations contained in paragraph (b)(1) of this section do not become effective pursuant to section 12(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the Agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) From and after the effective date of this Act, the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereinafter referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

(c) Upon the effective date of this Act as set forth in section 12, section 302 of the Colorado River Basin Project Act (43 U.S.C. 1522) shall no longer apply to the Community.

(d) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in regard to such costs against such lands.

(e) Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(f) To the extent the Agreement does not conflict with the provisions of this Act, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any actions required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(g) Effective as of the date of enactment of this Act, and, notwithstanding the provisions of section 177 of title 25 United States Code, the Salt River Pima-Maricopa Indian Community may, as to any land outside of the Salt River Pima-Maricopa Indian Reservation to which it holds fee title, leasehold interest or any other interest, sell, encumber, hypothecate, lease or otherwise deal with such land or interest in such land as any other owner, lessor or interest holder might, subject to the laws of the state within which the land is situated.

(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the Secretary and CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users.

SEC. 12. EFFECTIVE DATE.

(a) The authorizations contained in section 10(b)(1) of this Act shall not be effective until such time as—

(1) the Secretary has fulfilled the requirements of sections 4 and 7;

(2) the Bartlett Dam Agreement has been amended as provided in section 5;

(3) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 6(c) and the assignment described in section 6(d) has been executed;

(4) the funds required for the purpose of section 9(a)(1) have been appropriated;

(5) the funds authorized by sections 9(a)(2) and 9(c) have been appropriated and deposited into the Community Trust Fund;

(6) the State of Arizona has appropriated and deposited into the Community Trust Fund the $3,000,000 required by paragraph 20.2(b) of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "3.e." has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this Act and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) have not all occurred by December 31, 1991, sections 4, 5, 6, 7(b), 7(c), 8, 9(a)(2), 9(a)(3), 9(b), 9(c), 10(a)(1)(c), 10(d), and 11(a), 11(b), 11(c), 11(d), 11(e), and 11(f), and any contracts entered into pursuant to those provisions, shall not thereafter be effective, any funds appropriated pursuant to sections 9(a)(2) and 9(c) shall revert to the Treasury, and any funds appropriated pursuant to paragraph 20.2(b) of the Agreement shall revert to the State of Arizona.

SEC. 13. OTHER CLAIMS.

Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

SEC. 14. AK-CHIN.

(a) The Ak-Chin Indian Community of Arizona may make repayment of the Ak-Chin West supplemental loan by a discounted prepayment in lieu of the repayment terms and provisions contained in section 5(c) of Public Law 89–984, the Small Reclamation Projects Act. The Secretary of the Interior shall determine such amount in a manner that will result in an equitable repayment based on the current applicable interest rate.

(b) The Ak-Chin West supplemental loan is hereby exempt from the 1986 amendments (Public Law 99–546) to the Small Reclamation Projects Act, and the requirement contained in section 4(e) of Small Reclamation Projects Act for a sixty-day congressional review of the approved loan application is hereby waived.

(c) Within funds appropriated to the Bureau of Reclamation for the Loan Program in the Energy and Water Development Appropriation Act for fiscal year 1988 (Public Law 100–202), up to $4,900,000 shall be available for transfer to the Ak-Chin Farms West Project.

Passed the House of Representatives September 13, 1988.

Attest: DONNALD K. ANDERSON,
Clerk.

By DALLAS L. DENDY, JR.,
Assistant to the Clerk.

The **Chairman**. I am pleased to join my esteemed colleagues from the State of Arizona and fellow members of the Senate Indian Affairs Committee, Senator Dennis DeConcini and Senator John McCain, in support of this legislation. I believe it will serve as a model for future water settlements and I commend the parties for having worked so diligently to achieve this agreement.

Mr. Chairman, if I may at this time, because of the unique nature of this matter before us—and I believe this is an Arizona matter—may I pass the gavel on to my colleague, Senator DeConcini?

Mr. **Udall**. That's fine, Senator.

Senator **DeConcini** [acting Chairman]. Mr. Chairman, thank you very much, and I yield to the chairman of the House Interior and Insular Affairs Committee for any opening remarks he may have.

Mr. **Udall**. I thank the gentleman. I think our committees ought to try this once in a while. The Arizona Senators and I have been talking for some time about joint hearings. It saves time. It conserves the energies of everybody and gets the job done a little quicker and better most of the time, so this is a welcome experiment and we are delighted to have our colleagues over here. John McCain was a member of this group and is familiar with our processes and procedures. We will educate Senator DeConcini as we go along here. [Laughter.]

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA

Senator **DeConcini**. Mr. Chairman, thank you, and I welcome that education from people with such experience as both you and Senator McCain have had on this committee. We have rules in the Senate; you can't serve on all the major committees, except for Dan Inouye, I think is the only person that has that exception. [Laughter.]

But I thank you, Chairman Udall, and I want to put in the record my statement. I look forward to this hearing this morning with great anticipation. Just a few years ago I don't think there was anybody in the State of Arizona, certainly not this Senator, who thought it was possible to resolve this other than going through the very lengthy litigation process. Indeed, I compliment all parties who have participated in putting this together—the Indian community, the Salt River Project, particularly the Interior Department officials that spent a lot of time on it, Jim Ziglar, Ken Maxey, and Hayden Lee, and many others.

We have not finished this by any means. I know there is some opposition to it, and that is what the purpose of this hearing is, to listen to that opposition and to the pros and cons, and to make some decisions and maybe some alterations in it, but indeed it is the right way to go, far better than the turmoil and the cost that litigation would necessitate.

So I thank you, Chairman Udall, and I yield to Senator McCain for any opening statement he may have.

Senator McCain. Thank you, Chairman DeConcini. Thank you, Chairman Udall, for welcoming me back to the scene of so many crimes perpetrated on the American taxpayer. [Laughter.]

Mr. Udall. Mostly misdemeanors.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator McCain. There is not much I miss around here, but I sincerely do miss your leadership and companionship that I enjoyed for 4 years as a member of your committee. I gained enormously from your leadership.

I want to thank you and Chairman Inouye, and I think it might be well to remind our friends over here on the House side that Chairman Inouye has revitalized the Select Committee on Indian Affairs. His countless hours of commitment to Arizona and our issues, including visits to the Navajo/Hopi land, I think has been enormously impressive to me and to all of our colleagues. He has shown a concern and a commitment to Indian issues that I think has not been seen around the U.S. Senate in recent years.

I would like to express my appreciation not only to you all but to Secretary Hodel and Assistant Secretary Jim Ziglar and his staff who have really given a great deal of impetus to the settlement of this and other Indian water issues. When Secretary Hodel signed the plan 6 agreement, he charged us—we Arizonans—with the responsibility of moving forward on Indian water settlements. I think our community in Arizona and the varied interests that are represented here took him at his word.

We are moving forward, and I think we have come up with a settlement today, Mr. Chairman, that we know isn't going to be the final package but I think it is a very important initial step, and I think one of the most important aspects of it is that almost every one of the interests in Arizona are in agreement. Those that are still in disagreement, I think we can work with to resolve the concerns that they have.

The history of the Pima and Maricopas efforts to obtain water is not one of the proudest chapters in this country's relations with Indian tribes, but I am confident that the day is growing near when the community will be able to have a dependable water supply to assist in the development of their reservation economy. As the tribe states in their testimony, they seek to base their relationship with the United States upon dignity and self-reliance rather than dependence.

I realize, as Mr. Ziglar will state very shortly, that the administration has some strong concerns regarding certain settlement provisions. I also remember, as you do, Mr. Chairman, the Ak Chin settlement, the Papago settlement, the Tohono O'Odham and other settlements which the administration has had strong and understandable disagreements with in the past. We were able to resolve those. I am hopeful and very optimistic we can resolve other concerns that exist between ourselves and the administration.

Thank you, Mr. Chairman.

Senator DeConcini. I yield to the representative from Colorado, Mr. Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. REPRESENTATIVE FROM COLORADO

Mr. CAMPBELL. Thank you, Mr. Chairman. I don't have a formal statement, but coming from the Southwest, I am deeply interested in the problems we have out there. Certainly I have a special interest in finding an equitable solution to satisfy the Indian tribes 'historical rights to water. I really think the negotiated settling of water disputes is, you might say, the wave of the future and certainly preferable to all of us than some of these court battles that have taken place on water in the West.

I am just delighted to be here this morning and surely will appreciate hearing from all the witnesses. Thank you.

Senator DECONCINI. Thank you. I yield to Representative Rhodes from Arizona.

Mr. RHODES. Thank you, Senator, and let me add my welcome to you and to Senator McCain and Senator Inouye. We appreciate very much your making the trek over here to be with us this morning and to join us in what I believe is going to be an extremely interesting and very important hearing this morning.

Before I make a statement, I would like to ask unanimous consent to include in the record a statement of Congressman Bob Stump.

Senator DECONCINI. Without objection, so ordered.

Mr. RHODES. And three expressions of support for the settlement submitted by the San Tan Irrigation and Drainage District, the Queen Creek Irrigation District, and the Chandler Heights Irrigation District.

Senator DECONCINI. Without objection, they will appear in the record.

[Material appears in prepared statement of Mr. Rhodes.]

STATEMENT OF HON. JOHN J. RHODES III, U.S. REPRESENTATIVE FROM ARIZONA

Mr. RHODES. And my own formal statement which I would like to have included in the record, and which I will summarize.

As Senator McCain has noted, this is not the culmination but it is certainly a step toward the culmination of resolution of a dispute that has long hampered not only the development of the Salt River Pima-Maricopa Indian Community but also has thrown a cloud of question over the continuing development of the communities and the lands that lie in the watershed of the Salt and Verde Rivers in Maricopa County, AZ.

It is a great encouragement to me to be here today. Virtually the first or one of the first visits that I had shortly after my election in 1986 was from representatives of the organizations that are here today, to tell me that they felt that they were very, very close to achieving a settlement of their longstanding water rights disputes, and to give me a broad outline of how they proposed to go about resolving these, and to tell me that basically all that was left to do was a little bit of drafting, dotting of I's and crossing of T's, to use Mike Brophy's words. That was in December 1986.

There were a lot of I's and a lot of T's, evidently, in that proposal, but by golly, here we are, and I certainly want to extend my congratulations to everybody who has been involved in this. I want to join with my colleagues in expressing my appreciation to Secretary Hodel, and more particularly to Assistant Secretary Ziglar, to Ken Maxey, to Bill Swan, to all of Assistant Secretary Ziglar's associates at the department who worked very hard in the initial stages of the settlement agreement and, since we have come back and presented them with the proposal, have put in yeoman duty in analyzing it and in presenting it to their sister agencies, OMB and the Department of Justice, and in assisting us in coming to where we are today.

I understand that Secretary Ziglar is going to, when he testifies, express some reservations about some issues in the settlement which he will outline in greater detail. I just have a couple of points that I want to express to the department and to the United States, and that is that virtually everybody in Arizona—and I have to say virtually because there are some who disagree—but virtually everybody in Arizona agrees, [a] that this settlement is necessary and, [b] that this proposed settlement is the right way to resolve these issues for the best interests of the State.

I think the United States needs, in analyzing the settlement and in analyzing the requested participation of the United States, to assess its own risk. I think the United States has been very diligent in assessing the risks of the various parties in Arizona, but I want to put an emphasis on the fact that the United States is at risk here, too. I wish and I stress to the department that we need to be very careful in determining that there are claims asserted now against the United States because of their past activities, and there may be other claims.

If this were to proceed to litigation and if final judgment were found in favor of the community on all the claims that they have asserted, the loss to the non-Indian community of Maricopa County would be enormous. I think the United States needs to at least question whether or not that non-Indian community has a claim against the United States if those damages were to be assessed, because they relied to their detriment or may have relied to their detriment upon the actions and activities of the U.S. Government.

The second point I want to make is that it is the policy of the Department of Interior, the Bureau of Indian Affairs and the United States Congress to move Indian communities toward self-sufficiency. The Salt River Pima-Maricopa Indian Community is a shining example of a community that is moving itself toward self-sufficiency. The Salt River Pima-Maricopa Indian Community is currently about 75-percent self-sufficient.

Without a settlement of these water rights, and without the establishment of a firm right to water that this community can rely upon, it cannot make 100 percent self-sufficiency. This settlement is important to achieve the goals, not only of the community itself to become self-sufficient, but also to achieve the goals of the United States of America to assist and to move Indian communities toward self-sufficiency.

With that, Mr. Chairman, I look forward to hearing the testimony this morning and to all of us assisting our friends in Arizona to come to a final resolution of this, and I thank you.

[Prepared statement of Mr. Rhodes appears in appendix.]

Senator DECONCINI. I thank Representative Rhodes. Truly you and Senator McCain and Representative Kyl have done a great job, I think, in promoting and urging this accomplishment. I know that, like you said, when you first got elected just the year before last, you dug right into this. Believe me, it has been something that I have been digging in for a long time and haven't been able to see anything come to a resolution, so I compliment you, Congressman Rhodes, for that leadership.

I yield to Congressman Kyl.

Mr. KYL. Thank you, Mr. Chairman. I have a brief statement which I have submitted for the record.

Senator DECONCINI. Without objection.

STATEMENT OF HON. JON KYL, U.S. REPRESENTATIVE FROM ARIZONA

Mr. KYL. But I would like to just say something, particularly for the benefit of my colleague from Colorado, who probably has as much experience in Arizona water matters as those of us from Arizona, but just to reiterate something and to mention something personal, I was a water lawyer for many, many years prior to coming to the Congress. It always distressed me that one of the biggest problems in water law was the fact that the United States Congress had failed in its duty.

I know we have failed in many duties, but one of the areas in which the U.S. Government has fallen down, particularly the Congress, is the failure over the years to come to grips with the problem of defining the nature of reserve water rights and allowing that to be litigated in court endlessly, with all of the different decisions that then have to be interpreted by both Federal and State as well as Indian officials. That has left a great deal of confusion in the law, and it has also resulted in a situation where the number of claims, or the amount of claims so far, exceeds the available water supply in those places that litigation is inevitable.

The purpose of settlements like this is to try to cut through that and resolve the situation in a fair way, but that recognizes reality: that we can't deal with a situation where the amount of the claims is three times as much as the available water. That is what this settlement does, and I associate myself with the remarks of my Arizona colleagues in support of this settlement, not because it is the neatest, cleanest deal in the world, but because in the hard world of reality it works and is a step closer toward the ultimate resolution of all of the claims that exist in the State of Arizona.

To the point regarding the failure of Congress to have previously resolved some of these disputes and having left them to the courts, I would suggest to Secretary Hodel and the Department of the Interior that while we do have budget problems in this country, and while we have to be very careful in making a Federal contribution toward these settlements that is fair and appropriate, nevertheless the Federal Government has a significant responsibility here for its failure over the years to make these rules clear and to permit entities to resolve them in a clean way. I think that we ought to recognize that distinct Federal responsibility in determining whether or not we can afford to make the kind of Federal contribution toward this settlement that is going to be necessary if it is to work.

I, for one, think that Federal responsibility is something that will enhance this settlement. Whether it is the precise amount of money that has been included in the bill or not, we will have to wait and see, but clearly there has to be a substantial Federal contribution to this settlement.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Congressman Kyl, and your statement without objection will be entered in the record, as will mine, and also a letter from the Maricopa Audubon Society, National Wildlife Federation, Sierra Club, and Friends of the Earth. The Maricopa Audubon Society will be included in the record, without objection.

[Prepared statements of Mr. Kyl and Mr. DeConcini with letter appear in appendix.]

Senator DECONCINI. Echoing what my colleague from Arizona said about Senator Inouye, the chairman of the Select Committee on Indian Affairs—he has had to leave—we want the record to be very clear that through his leadership and that of Chairman Udall is why we are here today.

We will proceed now with the witness list: James Ziglar, Assistant Secretary for Water and Science, Department of the Interior, will be our first witness. Because we have a very lengthy panel of witnesses here, we are going to ask that the statements be summarized. All the statements will be submitted in the record. We will leave the record open for a period of time after the hearing so people can supplement those statement if they want to, but we would ask that you attempt to summarize your views so that we can pose a few questions, and there will also be written questions submitted to the witnesses after.

Mr. Ziglar, I want to thank you very much for the time you have spent on this. I have had a chance to look at part of your statement this morning, and disappointed I may be, but I know it is done in a sincere effort to represent the Department of Interior and the Federal Government. I thank you for the hours and time that you have put in on this settlement, as well as many other areas involving the State of Arizona. We are most indebted to you.

I yield to the Assistant Secretary.

STATEMENT OF HON. JAMES W. ZIGLAR, ASSISTANT SECRETARY FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

Mr. ZIGLAR. Thank you, Mr. Chairman. It is a great honor and I appreciate the opportunity to be here today to testify regarding S. 2153 and H.R. 4102. As you requested, I would like to submit my written testimony, for the record, and just very briefly summarize a few points in that testimony.

I would like to preface my comments by stating very clearly that the Department of the Interior strongly supports negotiated settlement of Indian water rights claims, and we are particularly appreciative of the fact that the local Indian and non-Indian parties have gotten together on this matter and have sought to achieve a settlement. We think that is a very positive development.

I deeply regret that I must express the administration's strong opposition to the enactment of this piece of legislation as it is currently drafted. It is my duty to inform you that the Department of the Interior would be forced to consider whether it would recommend that the President not sign this bill, should it be passed by the Congress in its current form.

It is also my duty to inform you that I have spoken with senior advisors to the President and they have indicated that they would be inclined to advise the President to veto it. I want to make sure that you understand the word "inclined." That is not an absolute statement at this point that the senior advisors would recommend that.

Our concerns are both financial and legal. With respect to the legal concerns, the Department of Justice will be submitting for the record in a few days a statement report as to the problems that they have from a legal point of view. Also, with respect to our financial concerns, we believe that the Federal Government is being asked to shoulder a disproportionate share of the burden of this settlement.

We will also submit for the record shortly a detailed listing of our comments on the legislation. What I would like to do is, in just a few minutes, focus on several examples of the kinds of things that trouble us regarding the financial settlement. I want to emphasize that these are simply examples. They do not include all of the comments that we have on the financial considerations.

First, within the $37 million of the Federal share to rehabilitate the current irrigation system and to expand it with some new facilities, there is approximately $11 million attributed to payments for rights-of-way. That $11 million represents somewhere between $35,000 and $75,000 an acre for right-of-way payments.

The fact of the matter is that, of course, this is agricultural land, and in Arizona the Bureau of Reclamation has paid between $330 and $3,700 an acre for rights-of-way in connection with the CAP irrigation systems. What I think has happened here is that the appraisal of the value of the rights-of-way has been based upon an urban, more commercial type of property, and it has been done in the context of power line rights-of-way. We think that is a rather large, excessive number to be paid for those kinds of rights-of-way.

Second, an example of something that is not included in the amount of money that is attributable to the Federal share of the settlement—and this is just one example, there are several of them—is a 10-year operation and maintenance cost relief for delivery of CAP water. The Federal Government would be obligated to pay the difference between the SRP cost and the CAP cost. That would amount to roughly $600,000 a year over the indefinite term—I am sorry, over 10 years—in which we would be required to pay that difference.

Another example of things that trouble us is the lease of CAP water, the CAP allocation, from the community by the city of Phoenix being characterized as a contribution. They will lease for 99 years 13,300 acre-feet of water for a one-time payment, or a payment over 3 or 4 years, of $16 million. My understanding of the nature of a contribution that it is something that you make without any consideration coming back. Consequently, the payment of

$16 million and the receipt of 13,300 acre-feet of water doesn't sound to us like a contribution. It sounds like a bargain for a consideration.

We also are somewhat concerned about the valuation of the water, the 32,000 acre-feet valued at $3,000 an acre-foot. We are not here to give you what we think is the value of that water. In fact, we would be reluctant to do that simply because there is some pending litigation and some litigation threatened that will conclude in some kind of determination of that, so we are not going to stipulate to the value. However, we would like to point out that $3,000 an acre-foot seems somewhat inconsistent with the fact that the water under the Phoenix lease is valued at roughly $1,000 an acre-foot. The value of the water in the Wellton-Mohawk acquisition is somewhere around $750 an acre-foot, and it has recently been reported that there was a "fire sale" in Arizona of some water, 10,000 acre-feet, at roughly $150 an acre-foot.

Now I realize there are some factual differences, but we just wanted to point out that there is, at least in our mind, a question of the valuation of that water.

Finally, we believe that the State contribution of $3 million is perhaps a little low in terms of the value that the State gets out of this settlement. We realize that the State of Arizona, like the Federal Government, is having some financial problems, and no one wants to put out any more money than they absolutely have to, but we do think that there are some equities and some value in this settlement to the State.

I would like to conclude on a positive note, and that is that I want to emphasize that we believe the parties can work out their differences here and that we are very anxious to be included in the negotiations that will reach a conclusion of this matter. I appreciate the opportunity to be here. I would be very happy to answer any questions.

[Prepared statement of Mr. Ziglar appears in appendix.]

Senator DECONCINI. Thank you, Secretary Ziglar. Let me ask a couple of questions and we will yield to other members here.

Your testimony takes some real strong exception. The Federal share is down to $77 million and there is $117 million in non-Federal participation. Wouldn't there also be some savings to the United States from the operation and maintenance costs associated with the Yuma desalinization plant? I have heard that the figure could be as much as $38 million. Can you comment on that?

Mr. ZIGLAR. In anticipation, Senator, of that question being asked, I asked the Bureau of Reclamation to take a look at that. The answer is yes, there is a very good possibility of some savings. It has been quantified at somewhere between $1 million and $2.5 million a year. We present-valued that over a 50-year term, I believe it is, and the present value of that savings, depending on what it actually worked out to be, would be somewhere between $12 and $20 million, we believe.

Senator DECONCINI. Thank you. Some in Arizona have raised concerns about the fact that we are allowing the tribes to market CAP-allocated water to the cities under the 99-year lease that you mentioned. The fear is that if CAP water allocated for agricultural irrigation purposes can be marketed for M and I use for this settlement, that the administration will propose the same type of arrangements for other settlements. Are there any existing legal constraints to allowing the contracted CAP water to be marketed off-reservation and, secondly, what is the department's position on that?

Mr. ZIGLAR. Well, the legislation of course makes it possible to do that, and we don't have any reservations or objections to the legislation doing that. There is clearly a lot of controversy regarding water marketing, particularly in connection with Indian settlements, and we believe that there is a distinction, a factual distinction, where you have intrastate marketing as opposed to interstate. By and large, in most cases, we believe that State water laws ought to govern that sort of thing.

Senator DECONCINI. Mr. Secretary, are there now any legal constraints to allowing contracted CAP water to be marketed, in your judgment, notwithstanding this legislation?

Mr. ZIGLAR. You mean by the tribe, or just in general?

Senator DECONCINI. Anybody who is an allocatee of CAP water, are there any legal constraints from marketing that water?

Mr. ZIGLAR. Well, of course we have contracts.

Senator DECONCINI. Well, besides that, taking that contract and selling that, whatever their allotment is, Indian or non-Indian, under the existing CAP legislation, not this bill.

Mr. ZIGLAR. I want to make sure I answer this one correctly. The contract with CAWCD, of course, the major contractor there, does allow for some marketing, but by and large, it is restricted by the terms of the contract.

Senator DECONCINI. So it is permitted subject to the contract agreement that you make when you contract for that allocation?

Mr. ZIGLAR. That is my understanding.

Senator DECONCINI. A number of cities in Pinal, Yuma, and La Paz Counties, Mr. Secretary, have expressed great concern about the Central Arizona Project aqueduct system being used for the delivery of nonproject water. There is a lot of discussion underway with private developers who are buying up private farmlands for the water rights, with the thought that the CAP system will be used to transport that water into the central part of the State. What role does the Federal Government play in approving the use of the CAP system for the transportation of non-CAP water? Have you addressed that at all?

Mr. ZIGLAR. Mr. Chairman, to my knowledge none of those parties who have been buying up water rights down in southern Arizona have asked us to consider whether we would allow them to use CAP facilities. Consequently, we do not have a policy on that. However, let me say that it is certainly within our authority to let others use those facilities, and I think that is reflected in the law.

Senator DECONCINI. Should there be a study to determine whether or not the capacity exists and what the impact would be and what the Federal responsibility is, if any?

Mr. ZIGLAR. We certainly would undertake a review of that prior to any—

Senator DECONCINI. Any requests to use it?

Mr. ZIGLAR. Certainly.

Senator DECONCINI. My last question, Mr. Secretary: The Wellton-Mohawk Irrigation District has indicated that a condition to its intent to make the 22,000 acre-feet of district water available for this settlement agreement, is that the department not look to the Wellton-Mohawk for future transfer, and that any transfer of water only be made with the approval of the district. Does the department have any intentions of using Wellton-Mohawk water for future settlements and, secondly, would the Department object to a provision in the legislation requiring the approval of the district board prior to any water transfer?

Mr. ZIGLAR. Well, I have no knowledge of any future plans to use it. Certainly, I think the district would have to be consulted in any case and have to agree to the transfer of water rights or the sale of water before it would occur.

Senator DECONCINI. So you would have no problems if we reach some legislation here that would permit the approval of the district, in the event there was any legislative effort to transfer further water from the Wellton-Mohawk Irrigation District?

Mr. ZIGLAR. I would certainly like to have the opportunity to consult with the Solicitor on that question—

Senator DECONCINI. Sure. That's fine.

Mr. ZIGLAR. [continuing]. Before I gave you a firm answer. I would be glad to answer it for the record.

Senator DECONCINI. That would be quite appropriate. Thank you, Mr. Secretary.

Mr. Chairman.

Mr. UDALL. I have no questions at this time.

Senator DECONCINI. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I think you have asked most of the relevant questions here.

Mr. Ziglar, I would like to thank you for your oral commitment to working diligently with all concerned to try and reach a settlement. I also appreciate your guarded optimism that that is possible.

For the record, Mr. Secretary, what has been the involvement in these negotiations on the part of the Federal Government?

Mr. ZIGLAR. Senator McCain, my firsthand knowledge of this process started last April when I was first sworn in, so I can tell you what I have been told up until April and then I can tell you what has happened since.

Up until roughly April of last year, we were a party, a participant in the negotiations on a regular basis, represented by a gentleman named Mike Clinton. Around that time the Department went in with an offer of about $45 million to settle this claim and also at least all or some portion of the Fort McDowell claim. It is my understanding that the other parties were upset with that offer and asked that the Federal Government no longer participate in the negotiations; that they would try to work out an agreeable settlement among themselves.

I came on the scene sometime in the summer. I had been looking at this situation and kind of hoping that maybe we could do something about it, and I asked for a meeting with all of the parties which was held at the Salt River Project offices and said, "Gee, I sure hope you folks are proceeding on with this, and if we can be of assistance, we would like to be of assistance, and we sure would like this thing to come to some conclusion," but we were not reengaged in the negotiations.

Since that time, I think it was in January, the agreement was presented to us in a large meeting at the Department, at which Congressman Rhodes, as the "point man" if you will, for the delegation was there, and a host of others.

Senator McCain. Or sacrificial lamb.

Mr. Ziglar. I will leave it to the Congressman to characterize it as he wishes. We had what I thought was a very positive meeting, and we indicated, looking at it right off, that there would be some problems with the money but that we wanted to do the very best we could to make this thing work, and I hope that is what we have been doing since then.

Senator McCain. Thank you. Obviously now you will be actively reengaged, and I believe the other parties are in agreement with that, also. I think it is very important that we have some in-depth discussions with you and your staff on this.

Thank you, Mr. Chairman.

Senator DeConcini. Representative Campbell.

Mr. Campbell. Thank you, Mr. Chairman.

I want to personally thank Secretary Ziglar for the time he has taken to come over here, and tell you that one of my personal interests in this is because there is a slight similarity to our Animas-La Plata bill, which also satisfies Indian claims, and I also want to thank you for the leadership you took on that in finding a negotiated agreement.

Something has come up in our bill that I thought might also be pertinent to this one, and that is the cost to the Federal Government and the local communities if we don't move forward with it. I think that so far I haven't heard anything that I didn't think people of good will could settle in this, and reach an equitable solution.

But when we were dealing with the Animas-La Plata bill we had a study done in Colorado that found if we did not satisfy the Indian claims, if you figured all the alternative costs including litigation costs and the loss of crops and a number of other things, and what it would do to the communities and the State and the possible repercussions, that if they went to court and won the water, what the people who would lose the water—the white ranchers who would lose the water—what they would do, would they in turn bring suit against the United States, any number of things. We found it would cost about $70 million more not to build it than to build it, and I am beginning to wonder if there isn't some kind of a parallel with this.

I have a philosophical belief that we need to move forward with it, but in a worst case scenario, if the tribal claims were not met, have you given any thought about what that is going to cost us in the cities of Phoenix, Mesa, and Tempe and the other communities that are here today, or the State or the Federal Government, if we don't build it—excuse me—if we don't satisfy the Indian claims?

Mr. Ziglar. Congressman, first let me express my appreciation for your expression of appreciation for my involvement in Animas-La Plata, but unfortunately that was settled before I got here. My deputy, Wayne Marchant, actually did a yeoman's task on that, and Wayne has kept the lead on that since. I am just on the periphery but somewhat familiar with it.

Congressman Rhodes also raised that question that you just raised, and I don't think that we have done a thorough analysis of the potential claims against the U.S. Government for detrimental reliance, if you will, by those who might claim that reclamation law and settlement acts and things like that have in effect entrapped them. I rather doubt—and this is a "shade tree" opinion—that a court would look very favorably on a claim such as that, based on some sort of entrapment theory or what-have-you, because there is no question in my mind that the communities have recognized that there are significant and serious claims out there by the Indian tribes for water rights. That knowledge would probably act as some kind of estoppel, at least in the mind of the court.

Now, that is just my view of it. We have not done an analysis from that perspective. As a lawyer, I think it is a very interesting idea. It might be fun to litigate it, but I'm not sure that—listen, you could spend the rest of your life doing that—but my "shade tree" opinion is that there probably is some problem with that claim.

Senator McCAIN. Thank you. I think you will find out West that the water attorney profession is a very active profession, as my friend from Arizona, Mr. Kyl, will tell you.

Mr. ZIGLAR. Oh, yes.

Senator McCAIN. Thank you, Mr. Chairman.

Senator DECONCINI. Congressman Rhodes.

Mr. RHODES. Thank you, Mr. Chairman.

Mr. Chairman, just an observation in response to your questions concerning the capacity of the aqueduct and priorities. My understanding is that the Central Arizona Water Conservation District has been addressing that and does have—they have either adopted a policy or are considering one. Tom Clark will be on the next panel, and perhaps we could address that question to him.

Senator DECONCINI. A good idea.

Mr. RHODES. Concerning Senator McCain's observation that I may be the delegation's sacrificial lamb, after reading your statement, the noise I think I hear is that of knives being sharpened. [Laughter.]

But I am operating on the principle, Mr. Secretary, that we should concern ourselves more with what you mean rather than with what you say, and I know what you mean very well and that you mean us to understand that in the Department's opinion, this settlement agreement is by no means a dead letter, is by no means something that we shouldn't even consider, but in fact is a very significant starting point from which you wish to proceed with us to resolve all of this. I appreciate that and I want to tell the audience, that's what the man meant; don't read his statement. [Laughter.]

Mr. ZIGLAR. Thank you, Congressman.

Mr. RHODES. Jim, there is one part of the statement I want to take exception to, and that is on page 5, basically all the page, and it basically says one of the things that the United States should take into consideration in evaluating what participation the United States should take is the fact that this is very valuable land, and that we should speculate on the possibility that this Indian community's values are going to change in the future, that their way of life is going to be altered, that they will become covetous of money rather than worshipful of the land on which they reside. I think, aside from the fact that that could be considered to be kind of insulting, it is certainly speculative, and I think that in terms of our future negotiations we will ignore page 5 of your statement.

Mr. ZIGLAR. A point well made, Congressman.

Mr. RHODES. You have looked into the background and the history of this settlement, have you not?

Mr. ZIGLAR. I have. In fact, within the timeframe that I have to focus on any one particular thing for very long, I suppose I have probably spent more time reading this because of my fascination with Arizona, as you know, and because I think it is an important issue in the Valley of the Sun, and I have spent a considerable amount of time looking at the history.

Mr. RHODES. How do you feel about the role of the United States with respect to this community of Indians?

Mr. ZIGLAR. Congressman, I think the United States has been less than diligent in pursuing its obligation to protect the rights of the Indian tribes in the Salt River Valley, not of late, but back certainly around the turn of the century.

My review of the history indicates to me that perhaps the Department of the Interior should have been more diligent in analyzing whether or not the Indian land should have been included in the SRP. I think the Department should have been more diligent in pursuing a Winters claim in connection with the *Hurley* case. Since it was decided after Winters by a couple of years, it should have been amended, in my view, to assert that claim. I think that the Federal Government has been—I don't want to use the word "negligent"—again, less than diligent in fulfilling the mandate that Congress gave us in 1916 to secure water supplies for some 6,310 acres of land.

I think all of those things in the aggregate say that the Federal Government is not without fault in the situation we find ourselves in today.

Mr. RHODES. Well, considering it is your view that the United States is not without fault, do you believe the United States should be a partner in this settlement?

Mr. ZIGLAR. You bet.

Mr. RHODES. You testified, I think, and if you didn't, it is my understanding that earlier on in the negotiations you—"you" meaning the United States—offered some $45 million as the United States' share for both the Salt River settlement and the Fort McDowell settlement which is still pending. Do you think that $45 million was a fair offer?

Mr. ZIGLAR. Congressman, when I took this job one of the first things that they told me was, "Don't ever express your personal views."

Mr. RHODES. You are relieved of that this morning.

Mr. ZIGLAR. Oh, good. I want to make it clear that what I just said a few minutes ago were my personal views, based upon my personal review of the record.

I think reasonable men can differ on the value that you place upon the United States' liability—whatever you want to call it—not legal liability but a certain moral liability in this situation. I think there really is a lot of room to differ on that. The only way I can do things like this is to review it and make up my own mind about how I feel about it, and I am not speaking for the administration. I have to make that very clear.

My view is that $45 million—and I am looking only at this settlement, I am not looking at Fort McDowell now—was a tad low. I also think that the $78 million is too much.

Mr. RHODES. I guess for those of us who were not brought up in Mississippi, we are going to have to sit down and discuss how we quantify "tad." [Laughter.]

Mr. ZIGLAR. That's as far as I'm going, Congressman. [Laughter.]

Mr. RHODES. I understand, but you are prepared to come back to the table, to sit down and start negotiating with the Congress and with the Arizona interests and the Indian community. That is a real offer and you are prepared to come in with some real money. Is that correct?

Mr. ZIGLAR. Congressman, that is certainly my understanding of our position, and that is certainly my position, and that is certainly a position that I will work very diligently to see becomes a reality. In fact, I have been informed by OMB yesterday that in the next week or so, OMB is going to release a new number that they think is a fair number. I have no idea what that new number is, and I don't know whether they know how to quantify "tad" either.

Senator DECONCINI. Would the Congressman yield?

Mr. RHODES. Certainly.

Senator DECONCINI. That troubles me, Mr. Secretary. Who negotiates these? Does the Interior Department or does OMB? You know, what good does it do to sit down with Interior if OMB has to set the figure?

Mr. ZIGLAR. Senator, Congressman Rhodes referred to OMB as a sister agency, and as in all families, we have our tussles. The fact of the matter is that they are an integral part of any negotiation or, for that matter, not just in Indian water claims but in everything else that we do, they are an integral part, looking at it from both a financial, budgetary point of view as well as a policy point of view. It is at times a very awkward and very difficult situation, particularly when you are a long way apart in what you think is a just and fair resolution of a problem.

Senator DECONCINI. Well, should OMB be at the table?

Mr. ZIGLAR. Senator, I would suggest that I really don't want to answer that question. You might want to talk to OMB.

Senator DECONCINI. I thank the Congressman.

Mr. RHODES. Thank you. I don't have any other questions. I just really do, Mr. Chairman, want to thank Secretary Ziglar not only for the time that he has devoted to this but to the members of his staff whom he has put on this task. They have done a tremendous job. They are to be thanked and appreciated, and I have no other questions.

Senator DECONCINI. I agree with that, Congressman.

Congressman Kyl.

Mr. KYL. Thank you, Mr. Chairman.

Just focusing on that one more time, I know it is customary for us up here to thank the witnesses for what they have done. This is more than just a customary thank you. All of us up here understand why that is. This has been a very difficult thing. We all understand that, and we know it is going to be difficult in the days and weeks ahead, but I think you know now that all of us appreciate your role in this and the role that you are going to be playing, and that you will have our full cooperation in doing what you need to help facilitate this settlement.

Now the point that Congressman Rhodes just brought up I think ties into that. The OMB has a job to do that is different than the job that the Department of Interior has to do, and it watches our dollars very carefully, and for that we are all grateful. It also is good at fixing values, with probably more precision than "tads," but that job isn't necessarily in full recognition of the history of this kind of problem that those familiar with the Department of Interior, with the Interior Committee here, appreciate.

Therefore, I want to go back to the point that I made initially, and to some extent it was brought out in Mr. Ziglar's testimony, and that is that the Federal Government here does have a responsibility. I would hope that, while that is appreciated within the Department of the Interior, that if there are ways that we can help the OMB appreciate that historical responsibility, I think all of us would like to have your thoughts on how we can best do that.

Without pointing the finger at the department or Secretaries of Interior in the past necessarily, I think we ought to acknowledge that the Federal Government itself, including, as I said before, the U.S. Congress, has failed over the years to tackle some of these very difficult problems that deal with water rights claims, particularly those asserted by Indian tribes. The result of that has been too much use of water, with the result that there are too many claims for the amount of water that is available.

That has resulted in a situation where, when the situation is resolved, everyone has to take less than they otherwise would have expected they would have to do. That is painful, and I think that the Federal Government has a responsibility in that painful process to help make up its share. I certainly would appreciate the concerns that Secretary Ziglar has expressed here about the precise numbers, whether they are precisely justifiable. I think that is something that we will all have to deal with, and it may be that there is a range in there where this thing will have to be settled, but we certainly need to help persuade OMB of this Federal obligation.

I want you to know that even though I am not a member of this committee, I have a very keen interest in doing that. Messrs. Chairmen, I will certainly be available for that effort. I don't have any other questions of the Secretary.

Senator DECONCINI. Are there any other questions of the Secretary?

[No response.]

Mr. ZIGLAR. Thank you, Mr. Chairman.

Mr. UDALL. We have been passing the gavel back and forth today between the House and the Senate. I have been watching carefully how it is used, and it is still intact, and I will take over for the while now and thank Senator DeConcini for chairing so ably.

The 25 witnesses that we have today are going to appear mostly in panels. We are going to try to get an interplay back and forth and collect more information that way, maybe, than proceeding one-by-one. We can have panel one, Mr. Gerald Anton, president of the Salt River Pima-Maricopa Council; Ms. Alfretta Antone; and Richard Wilks and Phillip Shea, attorneys.

All right. Who wants to go first?

STATEMENT OF GERALD ANTON, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL, ACCOMPANIED BY MR. RICHARD WILKS AND MR. PHILLIP SHEA, TRIBAL ATTORNEYS

Mr. ANTON. Mr. Chairman and members of the committee, it is a privilege for the Salt River Pima-Maricopa Indian Community to be represented here today in consideration of this very important legislation. I am Gerald Anton. I am president of the Salt River Pima-Maricopa Indian Community, and with me is vice president Alfretta Antone, who will address you in a few minutes; Mr. Richard Wilks and Mr. Phil Shea, our tribal attorneys; and members of our council in the audience.

The Salt River Pima-Maricopa Indian Community water rights settlement and legislation which you have before you will put an end to old wrongs to the people of the Salt River Indian Community and will give the community a fresh start. The settlement is the result of litigation filed by the community with the active encouragement of Senator McCain and other members of the Arizona delegation, as active support for the Department of Interior. Without the settlement, controversies will continue for generations and planning would not be possible.

The settlement looks forward to a new relationship between the United States and the Salt River Indian Community, a relationship based on dignity and self-reliance rather than dependence. The settlement is fair to every person in every respect. It is a reasonable compromise to a very complex and difficult issue. The financial provisions of the settlement do not subsidize the community, but for the first time place the community on a level of equality with its neighbors.

The significance and effect of this legislation before you is to provide the community a new self-reliance. It will enable the community to be successful in its struggle for self-sufficiency, an effort which resulted in remarkable achievements thus far. Today 75 percent of the community's budget is based on local funds. Twelve years ago only 15 percent was based on those local funds.

The community has successfully entered into the world of commerce. With the recovery through litigation of reservation sand and gravel lands, the community operates a modern and efficient sand and gravel enterprise which has grown to be the tenth largest in the United States. Community members are employed in the enterprise and revenue is generated to replace diminishing Federal programs.

Last year the community purchased a cement manufacturing plant which complements the sand and gravel business. The cement assets are substantially mortgaged at this time, but the community expects to develop a valuable equity in them through industrious and efficient management in years to come. The community has made major efforts, with the help of Federal legislation, to position itself to effectively operate in the modern economic world, and I want to thank you at this time.

[Prepared statement of Mr. Anton appears in appendix.]

STATEMENT OF ALFRETTA ANTONE, VICE PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL

Ms. ANTONE. Mr. Chairman and members of the community, thank you for the opportunity to testify before you today.

The community's program for achieving economic self-sufficiency requires that it enjoy an equal and fair opportunity to develop its agricultural resources. One may not ordinarily think of agriculture as a business of the future, but that is the case at Salt River.

Until 20 or 30 years ago, the Salt River Valley was an agricultural area. The lands lay within a Federal reclamation project which controlled a vast water resource and delivered irrigation water to almost a quarter of a million acres. Community lands were within the project boundaries but were excluded from participation in the project's benefits by Federal policy. The growth of the city has reduced project agriculture to less than 70,000 acres. By the end of this century, all non-Indian project lands will be retired from agriculture.

Urbanization has not taken place on the Salt River Reservation, and it never will. The people of Salt River Community have an ancient agricultural tradition. Our ancestors farmed the area of the Salt River over 2,000 years before the Federal Government took control of the water resource for the benefit of non-Indian settlers. Not only will the community not abandon that tradition, it is resolved to maintain and create an agricultural economy so as to provide the traditional homeland for our people, a place for future generations to live and prosper.

The urbanization of the metropolitan area has given us this opportunity. The Salt River Pima-Maricopa Indian Community can and will become the vegetable garden of central Arizona. The opportunity to achieve this new level of self-sufficiency is here and it is in your hands. The opportunity needs now to be seized.

Thank you.

Mr. UDALL. Thank you.

Mr. Wilks.

Mr. WILKS. I am here to assist the chairman and the vice chairman, Mr. Chairman, and will do so at their request. I have nothing further to add, except for that.

Mr. UDALL. All right. Does this complete your opening statements for the panel?

Mr. ANTON. Yes; it does, and the major portion is submitted for the record, so this is a synopsis of the statement that is submitted.

Mr. UDALL. All right. Any questions? Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman. I have several questions but I will just ask two of them here.

Mr. Chairman, you have heard Secretary Ziglar's testimony that the cost of the settlement legislation must be reduced before the administration can support this bill. The Secretary mentioned less agricultural development as one option. Now I would like to ask you if you can explain what percentage of the reservation will be developed for urban activities and what percentage for the agriculture. Do you have a plan?

Mr. ANTON. Yes.

Senator DECONCINI. And can you also at the same time, Mr. Chairman, explain whether or not the new irrigation system will be used at all to help develop urban lands.

Mr. ANTON. OK. The first part of the question is that the community for some time has recognized that we are unique and that we are located in the middle of over 2 million population, and the pressures for development have been very substantial. We have recognized, though, the council in its wisdom I think several years ago said that if we are going to develop, we need to do it in a planned way. The community is concerned for future generations to have a place to stay, as always.

We have this plan here, the general development plan, which outlines how we plan to develop. The council has taken an active role, and also the community, because we had public hearings to determine that we want to reserve these agricultural lands for future generations because of, as you know, the growth in the valley. Here is a picture of that general development plan, and we try and update it every two years. We have kind of gone over that. We need to go through that process again, so that is the plan and we are continuing in that area. We can submit it for the record.

Senator DECONCINI. Yes; I would like to have that.

Mr. UDALL. Without objection.

Senator DECONCINI. So you have a plan and that is it—

Mr. ANTON. Yes.

Senator DECONCINI. [continuing]. That would answer the questions as to the percentage for urban and the percentage for agriculture.

Second, will the new irrigation system be used at all to develop the urban lands?

Mr. ANTON. Mr. Wilks.

Mr. WILKS. If I may, Senator, my guess from looking at the map and from my understanding is that less than 5 percent of the land would be used for commercial development. The plan contemplates commercial development on the periphery of the community only, along Pima Road, perhaps McDowell and Hayden Roads, but reserving the entire interior for agriculture and for future homesites for members of the community.

Senator DECONCINI. And will the new irrigation system be used to help develop the urban land?

Mr. WILKS. To the extent only that—the answer I think directly is no, but the new water systems may be used to implement and increase the internal water system of the community, which has been actively being constructed over the last 10 or 15 years.

Senator DECONCINI. Thank you.

Chairman Anton, how would the tribe react to a modification of the section in this bill which requires a $10 million payment to the tribe for its Court of Claims case, if this was taken out and specifically you then could avail yourself of going to the Court of Claims; the money is out of this bill, and it is up to a court to make a decision whether or not you can collect $1 million, $10 million or $20 million or whatever? What response would you or your council have?

Mr. ANTON. Oh, we have discussed that and I think our legal counsel can reiterate that discussion. Phil Shea?

Senator DECONCINI. Mr. Shea?

Mr. SHEA. The community council is completely prepared to work out an accommodation on this issue. The accommodation would include the provisions the Senator has mentioned. It would of course be part of a package which would involve changes or contributions or concessions by other parties, and the language would have to be worked out. With those qualifications, the answer is yes.

Senator DECONCINI. Are you saying, Mr. Shea, that if $10 million was taken out, the provision that this is to satisfy the tribe's claims that would go to the Court of Claims, and if you were absolutely free to make your case to the Court of Claims and to recover whatever you could there, that if the language was properly drawn, the tribe would accede to that?

Mr. SHEA. Yes; if the language were properly drawn, if the tribe were not the only party to be involved in amendments to the bill.

Senator DECONCINI. Yes; I understand.

Mr. SHEA. Right. Yes, the answer is yes.

Senator DECONCINI. OK. Thank you.

Chairman Anton and your council, I want to particularly thank this panel, Mr. Chairman, because I have worked with them for a long time on this issue, as you have, even before I came to the Senate 11 years ago. It has been a long labor here to do something other than just force a legal right, which the tribe certainly has, in the courts, to attempt to negotiate something here. I know that has not been easy for you and the tribal members because of strong feelings that your entitlements may be even more under the interpretation of the law, but I just want the record to show that I think you have certainly addressed it in good faith and an attempt to find a compromise rather than forcing litigation.

That is all the questions I have, Mr. Chairman.

Mr. UDALL. I want to associate myself with these last comments. They are right on target, and you have done a good job for your people, and I think for all of us in Arizona.

Make no mistake about the importance of what Senator DeConcini just talked about here. This $10 million is viewed with grave concern by the administration. It is the stuff that veto messages are made of, and if we can handle it so your rights can be litigated in the Court of Claims, we would be in my judgment smart to go down that road. That is just free advice and my thinking at the present time. I would welcome any comment.

Congressman Rhodes.

Mr. RHODES. What we have here is three lawyers giving out a lot of free advice, and perhaps you ought to recall that frequently free advice is worth exactly what you pay for it, but I agree with both

Senator DeConcini and Chairman Udall in terms of the Court of Claims issue.

I want to follow up a little bit on Senator DeConcini's questioning concerning the development of the reservation and the community. As you heard in my statement to Secretary Ziglar, I accept the fact that it is the values of your community which dictate that this land is going to remain agricultural, that it will in the main not be developed for urban purposes, but that raises a troubling issue to me because, if our calculations are correct, the right-of-way that you are proposing for the irrigation system is valued at some $75,000 an acre, and that just does not seem to me to be consistent with the intention of maintaining the land as agricultural land. I need, and I suspect the committee will need to see some justification for those kinds of values, keeping in mind the stated intention of the community not to urbanize this property.

Mr. ANTON. Go ahead, Mr. Wilks.

Mr. WILKS. Mr. Chairman, Congressman Rhodes, the community, in attempting to review the costs of the project that we anticipate, retained the Bookman Edmondson Engineering Company to examine those costs, and out of their examination came the $11,500—$11.5 million, I find difficulty using large numbers like that—$11.5 million right-of-way estimate based on actual appraisals. Now we all know actual appraisals vary from situation to situation.

I would make one correction to the Assistant Secretary's remarks in regard to that. That right-of-way cost is based on the entire project, not merely the first two phases which deal with rehabilitation and 3,000 new acres. Additionally, and what is stated in our report—and we will submit the report for the record—additionally the community land, which is a major part over which the irrigation system will go, is contemplated to be donated, as I think is a proper kind of thing.

Now as to what the values are, the values are what they will be. We have one guess in this report, an educated and informed guess, and there are probably better guesses. The community is not going to expend more money for that purpose than it needs to do.

Mr. RHODES. I thank you. You are going to submit your appraisal report for the record?

Mr. WILKS. Yes.

Mr. RHODES. Things that get in the record don't as a matter of course get to me, so would you also give me a copy of that?

Mr. WILKS. Each member of the committee will get a copy of it.

Mr. RHODES. Thank you very much.

I have no other questions but, Mr. Chairman, I ask unanimous consent that a statement of Representative Kolbe be submitted and accepted for the record.

Mr. UDALL. Without objection.

Mr. RHODES. Thank you.

[Prepared statement of Mr. Kolbe appears in appendix.]

Mr. UDALL. Any further questions?

[No response.]

Mr. UDALL. If not, thank you very much, and we will proceed to the next panel.

Mr. ANTON. Thank you.

Mr. UDALL. Panel 2 is a group of mayors and city councilmen: Harry Mitchell, mayor of Tempe; Al Brooks, mayor of Mesa; Richard Dugan, mayor of Chandler; James Farley, mayor of Gilbert; Mary Rose Wilcox, vice mayor of Phoenix; Joel Falbo, councilman, Glendale; Janet Marcus, councilwoman, Tucson. Most of the accumulated wisdom in Arizona is here, in relation to urban matters.

Mr. Mitchell, do you want to be first?

Mr. MITCHELL. Yes, sir.

Mr. UDALL. All right.

STATEMENT OF HON. HARRY MITCHELL, MAYOR, TEMPE, AZ

Mr. MITCHELL. I want to just say that not only am I very excited about being here, as many of you know, I am a teacher of government, so I thought this would be a great firsthand experience. When I told my students yesterday that I was coming to testify, they were all excited. They expected to see me on C-SPAN. Well, obviously this is not the type of hearing that gets a great deal of national attention, but I think you can tell by the number of people that are here today from Arizona plus the number of people involved in negotiation and the years involved, that this is an extremely important matter to those of us that are here today.

Mr. Chairman and members of the committee, I am very pleased to be here. I am the mayor of Tempe, AZ, and president of the Arizona Municipal Water Users Association. The association members, which include the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and my home town of Tempe, along with the town of Gilbert, are principals in the water rights settlement and participated in the negotiations leading to the settlement agreement. We appreciate the opportunity to present our testimony supporting the legislation that is before you.

Collectively, the association members represent over 80 percent of the residents of Maricopa County, within which our neighbor, the Salt River Pima-Maricopa Indian Community, is also located. As is often the case between neighbors, the cities and the Indian community have been engaged in longstanding disputes over the allocation of Arizona's most important and scarcest natural resource, water.

The settlement, which the cities helped craft, resolves all of the Indian community's claims against both the cities and the Federal Government in a manner which we believe is fair and equitable to all parties—the Indian community, the Federal Government, and the local water users. Without this bill, all of the parties will have to return to the courtroom, with all the attendant expense and uncertainty. Even then the disputes between the parties may not be resolved.

The State of Arizona is also undergoing a general stream adjudication, the Gila River adjudication. Without this settlement, the Federal Government, on behalf of the Indian community, will have to assert and defend the community's claims against all other claimants in this lengthy and expensive legal proceeding. The settlement obviates this problem, as well.

I will not detail the very extensive negotiations which culminated in the settlement. As many as 14 different players at one time or another were involved over a 3-year period. Agreement was finally reached on the crucial issues: how much water was involved, and who would contribute water and funds towards the settlement. The details of the negotiations and the specifics of the settlement agreement are more fully described in written testimony which has already been submitted for the record.

Briefly, in return for the final settlement and quantification of all of the Indian community's and individual tribal members' claims to both surface water and ground water, the cities as our contribution to the settlement agreed to provide the following water supplies: one, 20,000 acre-feet from our Salt-Verde River supplies and, two, an additional 10,000 acre-feet from the City of Phoenix's supplies. In return, the cities will receive additional Colorado River water.

However, trading dependable, high-quality Salt and Verde water for the lower quality, less dependable Colorado River water will require that the cities incur an additional $17 million in operating cost. The City of Phoenix will pay another $16 million in cash up front for a 99-year lease on the Indian community's Colorado River allocation. In addition, the water supplies we will give up have been valued at $96 million replacement cost. The cities 'financial contribution, in cash and in kind, therefore, totals $129 million of today's dollars.

As you can see, the cities have contributed more than just water to this settlement. Furthermore, the State of Arizona and the Indian community itself will contribute $3 million and $2 million in cash, respectively, to round out the local contribution at $134 million. The Federal Government is being asked to proved $77 million towards the settlement, of which $30 million will require new authorization.

The problems that the settlement agreement resolves are serious problems for the Federal Government, the State of Arizona, local water users, and for the Indian community. All of these entities will be in a position to plan for future development in a cooperative fashion and with certainty as to the water uses involved, but only if Congress and the administration support the settlement agreement.

The cities appreciate your consideration of these bills and urge your positive response. On behalf of the Arizona Municipal Water Users Association and the city of Tempe, I thank you for the opportunity to present our position on this matter.

At this time I believe that the Honorable Al Brooks, city of Mesa, will now make a statement.

STATEMENT OF HON. AL BROOKS, MAYOR, MESA, AZ

Mr. BROOKS. Good morning. I thank you for the opportunity. So many people come to city hall to talk, and so few of those come to the Capitol of Washington. I feel it an honor to be here.

As an historical background, I would like to state that the city of Mesa was party to a very amicable settlement of the common boundary between Mesa and the Salt River Pima-Maricopa Indian Community, and this effort's success was due to the support of you, Congressman Udall. We thank you.

Now we are at a point of settlement of the Valley of the Sun's water resources issue. The city of Mesa is at a very substantial risk with several lawsuits it is a party to. One specifically is to enjoin us from ground water pumping to serve our 300,000-plus users. The other risk of nonsettlement is the uncertainty of what water Mesa can count on.

Now what have we contributed to this settlement? The city of Mesa has given up wet water, 1,600 acre-feet, through the Roosevelt Water Conservation District, with a replacement value of approximately $3,000 per acre-foot or $4.8 million. We have exchanged Mesa's SRP water for Colorado River Water, with Mesa paying the extra operational costs of this Colorado River Water.

But we will also receive a few things. No. 1, our lawsuits will be dismissed. No. 2, the RWCD existing contract for Salt-Verde water will be firmed up and extended for 50 years. Mesa is a successor to 20 percent of the RWCD. No. 3, the Salt River Community will cooperate in recharge projects on Indian land in the Salt River channel north of Mesa and south of the Indian community; And, No. 4, the massive Gila River adjudication will be furthered by settling the claims of the Salt River Indian Community.

This settlement is fair to all parties. It allows each party to plan for future use and development of their respective water resources. Mesa prefers settlement to litigation. Mesa prefers settlement to uncertainty. We do not have the deep pockets needed to see if litigation will be fun, as Secretary Ziglar pointed out, because the cost of nonsettlement will be horrendous.

Thank you.

Mr. UDALL. Thank you, Mayor.

STATEMENT OF HON. RICHARD DUGAN, MAYOR, CHANDLER, AZ

Mr. DUGAN. Mr. Chairman and members of the committee, I am Richard Dugan, mayor of Chandler, a community in the valley of 80,000 people. This settlement is important to the city of Chandler for many reasons, among them the following:

One, the parties to the settlement confirm Chandler's existing water rights.

Two, it will eliminate potential liability, both in terms of water and money, for any pending, planned or possible future litigation by the community.

Three, the water resource picture in central Arizona will be more stable, therefore enabling Chandler to more effectively calculate its available water resources and plan for our future.

Four, Chandler stands to gain and has already gained to some extent a beneficial relationship as a result of this settlement with our neighboring cities and Roosevelt Water Conservation District. This relationship will add to better water resource planning in the area in the future.

And, five, the settlement will set the stage for future negotiated settlements of Indian water rights in central Arizona, again to make more reliable the entire water resource picture in the Valley of the Sun.

Finally, I think it is a win/win situation for everybody involved. With that, I wish to thank the chairman for this opportunity to speak in favor of this legislation, and also would like to thank the members of our State's congressional delegation and our Senators for their assistance in efforts to make the settlement a reality.

Mr. Udall. Thank you.

STATEMENT OF HON. JAMES FARLEY, MAYOR, GILBERT, AZ

Mr. Farley. Good morning, gentlemen. It is an honor to address you today on a matter vital to the heart of all Arizonans, and that is water. My name is Jim Farley. I am the mayor of the town of Gilbert, AZ. Gilbert is located in the southeastern part of the valley. We like to think of Phoenix as being a suburb of Gilbert.

Mr. Udall. Some of us have been to Gilbert, and we might contest that. [Laughter.]

Mr. Farley. Our boundaries overlap almost one-half of the acreage encompassing the Roosevelt Water Conservation District. Much of this land is still in agricultural use.

Gilbert supports H.R. 4102 and S. 2513, which provide for the settlement of water rights claims of the Salt River Pima-Maricopa Indian Community. We certainly join in and echo the testimony presented to you earlier by Mayor Harry Mitchell of the city of Tempe on behalf of the cities and the towns participating in the settlement.

The settlement is fair, just, and equitable. It meets the goals of both the Indian community and the other Arizona parties. At risk are years in court in protracted and costly litigation which does not settle anybody's claims and provides for potential instability. Nobody knows the outcome of litigation. All we know is that during those long years we will be faced with uncertain water supplies.

Approximately one-half of the 8,000 acre-feet per year surface water which is being contributed by the Roosevelt Water Conservation District is surface water which Tempe has planned on using in planning for its future. Replacing this water will be expensive but we know the terms and the benefits that we will receive in stability, will far outweigh that contribution.

We believe it is in the best interests of all affected parties to settle these water rights claims, and on behalf of all of the people of the town of Gilbert, we ask your support on behalf of this legislation. Thank you very much.

Mr. Udall. Thank you.

Ms. Mary Rose Wilcox, one of the great leaders in the Phoenix community, we are glad to have you here.

STATEMENT OF MARY ROSE WILCOX, VICE MAYOR, PHOENIX, AZ

Ms. Wilcox. Thank you, Congressman.

Mr. Chairman and members of the respective committees, I am most pleased to be here today on behalf of the city of Phoenix, to join with the distinguished members of the Arizona congressional delegation and representatives of the other signatories to this historic Indian water rights settlement agreement, to testify in support of H.R. 4102 and S. 2153. As I am one of the numerous city representatives who wish to address you today, I will limit my remarks to highlighting a few key aspects of this settlement as presented in the cities' joint written testimony.

First, these bills will settle longstanding Indian rights disputes in the fairest and most equitable way possible, and with much greater certainty and speed than in relying on our judicial system. Under the agreement, the Indian community will receive enough water to fully develop their reservation. The water will come from a variety of sources, including the irrigation districts, the cities, the Salt River Project, and the Federal Government. All of the parties will contribute something.

Second, both the Federal Government and the local parties have an interest in settling these matters. The proposed settlement accomplishes that by distributing the cost among all the parties in a manner which has greatly reduced the cost to the Federal treasury. In addition to the contributions of water valued at $96 million, the local entities, including the Indian community, will contribute $21 million in cash and assume $17 million worth of long-term operating expenses, for a total of $134 million. This has resulted in reducing the Federal share of the settlement to only $77 million in direct costs.

Third, the impact on parties outside of the settlement has been kept to a minimum. Acquisition of water supplies from the Colorado River will be, by specific terms of these bills, done only on a willing seller basis. Movement of the water through the CAP canal systems will be accomplished in a manner which minimizes the adverse effects on CAP customers. In fact, the CAP customers will enjoy increased reliability of water supplies from the Colorado River, as well as slightly reduced operational costs due to the increased use of the system.

In summary, the city of Phoenix believes these bills represent the fairest, most cost-effective means of settling the water rights claims of the Salt River Pima-Maricopa Indian Community, and we urge your support. Thank you very much. I think it is just overwhelming that all of the congressional delegation showed up to support us. Thank you very much.

Mr. Udall. Thank you.

Mr. Falbo.

[Prepared statement of the Arizona Cities appears in appendix.]

STATEMENT OF JOE FALBO, COUNCILMAN, GLENDALE, AZ

Mr. Falbo. Mr. Chairman, Senator DeConcini, Representative Rhodes, I am Joe Falbo, council member, city of Glendale. I am here on behalf of Mayor George Renner and the citizens of Glendale. I believe for the record you have a copy of my testimony.

I will simply associate myself with the remarks of my colleagues and tell you that after I have heard the comments this morning, it does remind me of the statement attributed to Winston Churchill in just a similar kind of important situation, that this is not the end nor is it the beginning of the end, but certainly it is the end of the beginning and it is important that we are here. It is important to the citizens of Glendale. It is important to all of our people, Indian and non-Indian alike.

We urge your support and continuing assistance in getting the legislation through Congress and on to a successful signing by the President. Thank you.

[Prepared statement of Mr. Falbo appears in appendix.]

Mr. UDALL. Thank you very much.

Our final panelist is Ms. Janet Marcus, who is an outstanding new city councilwoman in Tucson. We are glad to have you here in Washington.

STATEMENT OF JANET MARCUS, COUNCILWOMAN, TUCSON, AZ

Ms. MARCUS. Mr. Chairman and members of the committee, I am delighted to be here. I am pleased to appear here today on behalf of the city of Tucson to testify in support H.R. 4102 and S. 2153.

As you well remember, Mr. Chairman, in 1982 the city of Tucson was a major participant in the agreement with the Papago Tribe, now the Tohono O'Odham Nation, which resolved claims to water for the San Xavier Reservation and the Schuk Toak District. The United States joined in this agreement by enacting the Southern Arizona Water Rights Settlement Act of 1982.

We appear today in support of the settlement of another long-standing Indian water rights dispute involving our municipal neighbors in Maricopa County. While the city of Tucson has not been a party to the dispute and is not a party to the settlement, we welcome the settlement as a benefit to the entire State. We understand that the Indian community will receive the water needed to fully develop its lands and that the various parties will be contributing water and funds in such a manner as to assure that the water will be efficiently utilized.

Impacts on parties outside of the settlement have been kept to a minimum. Movement of acquired Colorado River water through the Central Arizona Project canal system will be accomplished in a manner which minimizes the adverse impacts on existing CAP customers. Central Arizona Project customers, including the city of Tucson, will enjoy increased reliability of supplies during shortages on the Colorado River, as well as slightly reduced operational costs due to the increased use of the system.

In summary, the city of Tucson supports these bills as a fair, cost-effective means of settling the water rights claims of the Salt River Pima-Maricopa Indian Community. I appreciate the opportunity to join with my colleagues to the north in support of these bills.

Mr. UDALL. Thank you.

Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I have no questions of the witnesses here. I understand their position very clearly, and have reviewed their statements, and thank them all for being here. I think it is important to the record to show that some communities here who really have no direct involvement with the benefits or the process here have gone out of their way to support a negotiated settlement, which I think certainly bodes well for Arizona's non-Indian population to find resolutions outside the courtroom

Mr. UDALL. That is very important, I agree.

The gentleman from Arizona.

Mr. Rhodes. Which one, Mr. Chairman?

Mr. Udall. Mr. Rhodes.

Mr. Rhodes. Thank you. I have no questions. I just want to observe that with the exception of Mr. Falbo and Ms. Marcus, the panel that you see and I all represent the same people, the finest people in the finest cities in the finest congressional district in the State of Arizona. [Laughter.]

Mr. Udall. Will the gentleman yield?

Mr. Rhodes. No; I will not yield. I will not yield. [Laughter.]

Mr. Udall. The gentleman declines to yield.

Mr. Rhodes. And, Mr. Chairman, I would suggest that you come out and visit Gilbert, and then you wouldn't be so quick to doubt Mr. Farley's statement.

Thank you all for being with us.

Mr. Udall. Our next panel is a pretty tough-looking bunch here: John Lassen, the president of the Salt River Project; Mark Dobson, president of the Roosevelt District; Bruce Heiden, director of the Roosevelt District; Edward Bull, attorney for Roosevelt District; and Mr. Thomas C. Clark, who is general manager of the Central Arizona Water Conservation District.

President Lassen, are you ready to go?

Mr. Lassen. Thank you, Mr. Chairman. Yes, I am.

Mr. Udall. The leadoff hitter.

STATEMENT OF JOHN LASSEN, PRESIDENT, SALT RIVER PROJECT

Mr. Lassen. I am John Lassen, president of the Salt River Project. With your approval, I would ask that my prepared statement be included in the hearing record.

Mr. Udall. Without objection.

Mr. Lassen. And that I be permitted to summarize at this time.

Mr. Udall. That will be very helpful.

Mr. Lassen. The Salt River Project operates six Federal Bureau of Reclamation dams on the Salt and Verde Rivers northeast of Phoenix. These structures impound the runoff from a 13,000-square-mile watershed to provide the surface water supply, through a series of canals and laterals, for agriculture, residential, recreational, municipal, and industrial use in central Arizona.

The Salt River Project, through ownership and participation in coal, gas, oil, nuclear and hydro facilities in Arizona, Colorado, New Mexico, and Nevada, also provides electricity for a little over half a million customers in the Phoenix metropolitan area.

On behalf of the Salt River Project, I would like to thank the committee for this opportunity to testify in support of S. 2153 and H.R. 4102, legislation which would codify the Salt River Indian Water Rights Settlement of 1988. It is a pleasure to be here, and I would like to thank the members of the Arizona congressional delegation for sponsoring this legislation.

While the committee is familiar with the complex and controversial nature of Indian water claims and the quantification of reserved rights, you may not know that the agreement encased in this legislation represents a major milestone in the history of Arizona water law. In this agreement, the Salt River Project meets its obligations to our shareholders to provide a reliable water supply, and the Salt River Indian Community assures its members of an appropriate mix of surface and ground water, as well as fair and reasonable compensation for water lease rights to the city of Phoenix.

The agreement also confirms contracts between the Salt River Project, the Roosevelt Irrigation District, and the Roosevelt Water Conservation District, as well as various water exchange agreements between central metropolitan communities and adjacent water districts. But, perhaps most importantly, we believe that this agreement will pave a path toward resolution of other Indian water claims in Arizona, as part of the ongoing Gila River stream adjudication process.

Mr. Chairman, others have discussed the terms and conditions of the agreement in great detail today. I would add this one observation: About 2 years ago, April 15, 1986, to be specific, many of us in this room met at the Department of Interior to sign another historic agreement—the Central Arizona Project Local Cost Sharing Agreement. By that agreement, Arizona interests will advance some 20 percent of the cost of plan 6 features of the Central Arizona Project. To date, local interests have contributed nearly $30 million, and the Federal Government has continued to meet its financial obligations as well.

At the time we signed that agreement, Interior Secretary Don Hodel challenged us to review our differences with our Indian neighbors and return to Washington with a negotiated settlement. The legislation before you represents many weeks and months of negotiation and concessions by all parties, and let me tell you that everybody who came to the table gave up something. While no negotiation as complex as those which led to the Salt River water rights settlement can totally satisfy all the parties involved, we are here today to tell you that we have in fact reached a reasonable settlement which does justice to all the water interests in Central Arizona.

Mr. Chairman, I would respectfully suggest that on page 3 at line 16, the Kent Decree date be corrected to March 1, 1910.

Mr. UDALL. Without objection.

Mr. LASSEN. Thank you again, sir, for the opportunity to join the members of the Arizona congressional delegation and other witnesses today to express our enthusiastic support for the early enactment of this important legislation.

Mr. UDALL. Thank you.

[Prepared statement of Mr. Lassen appears in appendix.]

Senator DECONCINI. [acting Chairman]. Thank you.

Mr. Dobson, if you would summarize your testimony.

STATEMENT OF MARK DOBSON, PRESIDENT, ROOSEVELT WATER CONSERVATION DISTRICT

Mr. DOBSON. Chairman Udall, Senator DeConcini, honorable committee members, my name is Mark Dobson. I am president of the Roosevelt Water Conservation District, also known as the RWCD, and a member of its board of directors. I was first elected a director of the RWCD in 1982, and am now serving my fourth term as its president.

The landowners of the RWCD are grateful for this cpportunity to testify in favor of the legislation before you, which will authorize and approve the Salt River Pima-Maricopa Indian Community water rights settlement. This legislation will settle litigation in which RWCD, hundreds of other residents of the Phoenix metropolitan area, and the Salt River Pima-Maricopa Community have been engaged for many years. The settlement will give RWCD landowners certainty. It will also give to our Indian neighbors water which will enable them to farm and to prosper.

RWCD's area encompasses approximately 40,000 acres. The planning areas of the Cities of Mesa and Chandler and the town of Gilbert extend into and cover the greater part of RWCD's area. RWCD receives approximately 40,000 acre-feet per year of water from the Salt and Verde Rivers, exclusive of floodwater. RWCD also pumps ground water for its landowners, and has an agricultural water service subcontract from the Central Arizona project. Over the years controversy developed about RWCD's water rights. The Indian community has filed numerous lawsuits challenging our rights to use water. In order to settle these lawsuits, RWCD has become a participant in the settlement.

Under the settlement, RWCD will cause to be delivered to the Salt River Pima-Maricopa Community up to 8,000 acre-feet of water per year from RWCD's entitlement to waters of the Salt and Verde Rivers. This amount of water equals approximately 20 percent of RWCD's entire supply of water from the Salt and Verde Rivers, exclusive of floodwater. RWCD will continue to bear all the expense of lining and maintaining approximately 28 miles of canal in the Salt River Project which produces this water. RWCD will do so at its sole expense, and not at the expense of the Federal Government or of the Indian community.

In return for these contributions, the settlement agreement and the authorizing legislation will confirm RWCD's rights and place RWCD in a position to be able to deliver water to the community. Arriving at this settlement has been a painful, expensive process. Nonetheless, we believe the pain and expense has been justified by the settlement now reached, which strikes a fair balance to those participating in it without adversely affecting or interfering with the interests of other water users in Arizona, both Indian and non-Indian, who are not parties to the settlement. We urge you to enact the legislation before you.

If I may, a personal note: Our Nation has a proud tradition of neighbor helping neighbor. We must continue to tap that spirit and strength, the partnership between Government and the private sector, in order to fulfill our responsibilities to needy Americans—a quote from Senator John McCain.

I have brought with me our district manager, Mike Leonard, and counsel, Mike Brophy of Ryley, Carlock & Applewhite, to answer any technical questions you may have. Thank you for this opportunity to testify.

[Prepared statement of Mr. Dobson appears in appendix.]

Senator DECONCINI. Thank you, Mr. Dobson.

Mr. Heiden, would you summarize your testimony, please?

STATEMENT OF W. BRUCE HEIDEN, DIRECTOR, ROOSEVELT IRRIGATION DISTRICT

Mr. HEIDEN. Mr. Chairman and members of the joint committees, my name is W. Bruce Heiden. It is my honor to appear before you this morning in support of S. 2153 and H.R. 4102. I am a farmer, and for 41 years have lived on my farm northwest of Buckeye, AZ. For 17 years I have served as one of three elected directors of the Roosevelt Irrigation District. On behalf of RID and the farmers who depend on RID for their water, I thank you for your attention to this important Indian water settlement.

The Roosevelt Irrigation District was created in 1923. We serve over 150 farmers on nearly 35,000 acres. Our farms are located over 25 miles west of the Indian community's reservation. Our water is derived primarily from wells located in South Central Maricopa County.

Over the past 65 years, RID and its farmers have borrowed and otherwise obligated millions of dollars to obtain, develop, improve, operate and maintain our district, our farms, and our irrigation systems. We made these investments in reliance on our water supply being assured by our 1921 water contract, which was then and has since been approved by the Secretary of Interior.

Nearly 2 years ago RID was invited by representatives of the Interior Department and the Indian community to participate in these water settlement discussions. We were impressed with the Interior Department's commitment to see the settlement through to implementation. After nearly 2 years and innumerable negotiating sessions, we are pleased to be here as a party to this settlement agreement.

Along with doing many other things to help stabilize water rights in the valley, this settlement reassures RID's right to continue providing our farmers with water.

We believe the settlement is fair and is one to which all parties will contribute. On behalf of the RID, our farmers, and those businessmen who depend upon our farming economy, I ask for your help and support in approving and implementing the settlement.

I thank you for your help and appreciate the opportunity to appear before you.

[Prepared statement of Mr. Heiden appears in appendix.]

Senator DECONCINI. Thank you, Mr. Heiden.

Mr. Clark, if you would summarize your statement, please.

STATEMENT OF THOMAS C. CLARK, GENERAL MANAGER, CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Mr. CLARK. Yes, sir; Mr. Chairman, my name is Thomas C. Clark. I am the general manager of the Central Arizona Water Conservation District. I greatly appreciate the opportunity to appear in behalf of the district in support of the legislation before you, S. 2153 and H.R. 4102.

The Central Arizona Water Conservation District is not a major player in the issues to be resolved by the agreement in the proposed legislation. However, as a local entity which will operate the Central Arizona Project and which will repay something in the neighborhood of $2.5 billion of project construction costs to the Federal Government, the district is very interested in the implications of the agreement and the legislation upon CAP water supply, operations, and repayment potentials.

The district board of directors was presented an agreement which had been signed by the principal parties and was asked to join in that agreement. The board declined to do so until some concerns about CAP water supply, operations, and repayment had been resolved. The details of those concerns are in our filed statement. An intensive effort to resolve our concerns was undertaken, and in some 30 days the board was able to endorse the agreement. The district will become a signatory in the next few days.

In the course of considerations of this program, the board adopted a set of principles and policies as guidelines for its involvement in Indian water rights settlements. It was those principles against which this settlement was measured. The board did not compromise principle for the current facts of the issues. The board found that this settlement is substantially in agreement with its adopted policies and principles.

The district believes that the settlement is needed. We now feel that the program is crafted to internalize the impacts as much as possible. We believe that impacts on entities not directly involved in the settlement have been minimized to the degree that they are inconsequential with respect to this particular settlement. We believe our responsibilities to our community are best discharged trying to make this settlement a reality.

One other thought that I would add as an observer of the board, this particular element of local government is asking you, the Congress, to go forward with a pragmatic solution to a particular set of problems and possible remedies. In doing so, they have reserved for future boards of directors the obligation to evaluate future settlement proposals on the unique conditions of each case.

That is all I have as a statement. I would, Senator, take this opportunity, if it is appropriate, to respond to an issue raised by Congressman Rhodes earlier about capacities on the canal.

[Prepared statement of Mr. Clark appears in appendix.]

Senator DECONCINI. Well, let me ask, are there any other statements that you would care to submit here? We will get back to you, Mr. Clark, on that subject matter.

Mr. CLARK. OK.

Senator DECONCINI. I do ask that at the appropriate time in the record, a statement from Mayor Herb Drinkwater of Scottsdale be inserted in the record in support of H.R. 4102 and S. 2153, as well as a statement from Acting Governor Rose Mofford.

[Prepared statements of Ms. Mofford and Mr. Drinkwater appear in appendix.]

Senator DECONCINI. Mr. Clark, you wanted to qualify or respond to some statement that was made. Please go ahead.

Mr. CLARK. Yes; Congressman Rhodes suggested that maybe I could comment on the capacity available in the CAP to move water that is nonproject water. Unfortunately, neither the Bureau of Reclamation nor the Central Arizona Water Conservation District has studies that fully identify what capacity is available. However, in the principles that the board adopted, they have taken the position that they will utilize whatever capacity there is to facilitate agreements such as this.

In particular, the principles of agreement that were reached as we developed our final position identified a situation where we anticipate there will be a shortage of capacity—that is, between the New Waddell turnout and the Union Hills treatment plant of the city of Phoenix—and we have agreed to surcharge that stretch of canal—that is, to operate it beyond its intended capacity in order to accommodate this particular agreement. Now obviously we won't be able to do that ad infinitum, but that is how we have addressed the situation.

Senator DECONCINI. What you are saying is, if the capacity is there, you will take it. Is that right?

Mr. CLARK. We will devote it to this type of—

Senator DECONCINI. To that thing. You mentioned that you have not done a study. Do you think a comprehensive study on the issue of the canal system for nonproject water, to determine the effects, would be helpful?

Mr. CLARK. I think it is premature at this time, Senator. We have only been able to operate all six of our pumps at Havasu for a very few minutes. We really don't know what kind of capacity we have overall. I think such a study would best come further down the line, as we are more sure of what we have to work with.

Senator DECONCINI. Well, we have a problem looming in some of the rural counties, of a tremendous amount of water being bought up and being used to satisfy claims in the urban areas, assuming they are going to get it there someplace, and the only way to get it there is through this canal. They are greatly concerned about the impact on them economically, and whether or not there is a capacity, and whether or not this is real transfer of water or only paper.

The reason I asked, and I am glad you addressed the question, your answer then is that you think it would be premature to even have the Interior Department or the Bureau make any feasibility studies or anything on this subject matter. If that is the case, when do you think we might get to that, because I think these people have a real legitimate claim for us to attempt to address.

Mr. CLARK. I think, Senator, that as we approach utilizing the canal to its full capacity, to moving something in the area of 1.5 million acre-feet of water per year or upwards, that at that time is the first time we will really begin to know what we can move, and that should come within the next 2 to 3 years.

Senator DECONCINI. Well, in the meantime then we leave those counties exposed to continuously thinking they are losing water, and in reality they are, particularly when a municipality buys it, because they lose the tax base and it leaves us in a real difficult problem. It is your feeling that there is no way to make an assessment without turning on all six pumps for a long period of time to see what the capacity is?

Mr. CLARK. Well, sir, I think that we can make an assessment but if I were involved in it, I would see that the identification of capacity was as conservative as possible at this point in time.

Senator DECONCINI. Fine. Thank you very much.

I have some questions, Mr. Chairman, that I will submit to the people. The Senate is going to have a vote in 5 minutes, which is going to necessitate me to leave, so I will submit the balance of my questions.

I do want the record to show, Mr. Chairman, that this panel, all the panels, have tremendous effort here and economic interests and a trust responsibility to their members to represent, and they have indeed given up something, and there is some question as to what more they can give if we have to renegotiate here, but I thank them for their willingness to negotiate this very sensitive area.

Thank you, Mr. Chairman. I am going to have to leave.

Mr. Udall. Well, thank you for participating. We had the whole delegation here to begin with, and we are now down to me, so things will get done. We may reach some agreements here in the next few minutes. [Laughter.]

Tom Clark, I wanted to ask you one question before we leave. I just noticed in some later testimony that the proposed purchase of Wellton-Mohawk water and its delivery to the cities violates provisions of the master contract between the U.S. and the CAWCD, as well as violating the terms and conditions of each irrigation district's water supply subcontract with the United States and the CAWCD. Would you comment on this suggestion?

Mr. Clark. Chairman Udall, I do not have my counsel here today and it might be better that he answer that, and we would certainly respond for the record on that, but I would suggest that this issue has been discussed as the district's position was advanced and it is certainly arguable that might be the case, sir.

Mr. Udall. All right. I have no further questions, and I commend all of you for the spirit that has been shown here and for your testimony. I think we have built a hearing record that can support action quite soon on this important legislation. Thank you very much.

The next witnesses are panel four: John Smith, Norman Pretzer, and William Baker, the Maricopa-Stanfield District and the Central Arizona Irrigation and Drainage District.

Welcome, gentlemen. You may proceed, Mr. Smith.

STATEMENT OF JOHN SMITH, PRESIDENT, MARICOPA-STANFIELD IRRIGATION DISTRICT

Mr. Smith. Thank you, Mr. Chairman—Mo. I feel a little bit like the illegitimate son at the family reunion here today.

Mr. Chairman and members of the committee, I am John Smith, president of the largest CAP agricultural water contractor, Maricopa-Stanfield Irrigation District, located in Pinal County, Arizona. I am a farmer. I live on a farm. I have been a farmer most of my life.

I appreciate the opportunity to appear today to oppose the passage of H.R. 4102 and its companion Senate bill. I do not do this lightly, but feel that this settlement agreement attacks two very basic rules contained in the allocation of Central Arizona Project water which directly impact the CAP water supply available to my district. Because of that, my district cannot stand silent because once the gates are open, we do not know where this invasion of our contract rights will stop.

Mr. Chairman, I am going to paraphrase this statement of mine if it's all right with you.

Mr. Udall. It would be very helpful.

Mr. Smith. It's several pages and I think everybody has a copy in the delegation.

Mr. Udall. Just tell us what is on your mind, and we will put the copy in the official record, and no one will ever know that you didn't read every word of it.

Mr. Smith. Thank you, Mr. Chairman.

First let me say that I agree with the principle that Indian water rights claims should be settled rather than litigated, like everybody else here. As a matter of fact, as you well know, I was one of the leaders, one of the principals in the original Ak Chin water settlement some 10 or 12 years ago. However, just because I agree with that principle doesn't mean that we necessarily have to approve every settlement that comes along. We feel that the adverse impact on the rights of the nonparticipants in this settlement is wrong.

I said there were two basic things in this settlement that we don't agree with, Mr. Chairman. One of those is the taking of CAP water, agricultural water, and changing it to M and I water and using it to settle the Indian water rights claims by the city of Phoenix and the Salt River Project. This in effect, as was pointed out by, I think, one of the people from the city of Phoenix earlier, raises their Central Arizona Project allocation from, I think, 640,000 acre-feet to something like—add 27,000 to that—667,000 acre-feet of water. Well, that water has to come from someplace, and it obviously comes from non-Indian agriculture.

Second, we think it violates the intent of the Central Arizona Project Act as well as the allocations, to change—to allocate agricultural water in the case of the RWCD for agricultural use, and then change that to M and I uses. Under the terms of our agreement, that water should go back in a pool and be reallocated to non-Indian agriculture.

Mr. Chairman, our district, as you well know, has about completed the Central Arizona Project distribution system. We will have spent, when that system is complete, about $97.5 million. $26 million of that was borrowed from Wall Street, in which we have the awful interest rate of 10.4 percent that we have to repay. The balance of that was financed by the Federal Government.

We think that this agreement here adversely impacts our ability to repay the Federal Government. I hear some water prices thrown around here today. I have heard $3,000 an acre- foot, and just to digress from my statement a little bit, I am wondering if these people are willing to pay us $3,000 an acre-foot for that water that my district loses because of this settlement.

Mr. Chairman, I am going to close with one thing. As much as anything else in this settlement, I am very concerned about the precedent that it sets. It may be that we are not able, we don't have the resources available to us in the State of Arizona and the Federal Government, to settle all of these Indian water rights claims on this particular basis.

Mr. Chairman, I wish to express my thanks for this opportunity to raise these issues with your committee, and I would respectfully request that your committee uphold my district's contract rights, uphold the purposes of the Central Arizona Project, uphold the Secretarial allocation orders, and I urge the parties to reach a settlement that will not impact the rights of others who are not parties to the settlement and were never contacted at any time during the negotiations.

Thank you, sir, and I am available for questions.

[Prepared statement of Mr. Smith appears in appendix.]

Mr. UDALL. Thank you, Mr. Smith.

Mr. Pretzer.

STATEMENT OF NORMAN PRETZER, PRESIDENT, CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT

Mr. PRETZER. Mr. Chairman, my name is Norman Pretzer. I am president of the Central Arizona Irrigation and Drainage District in Pinal County. My statement is submitted for the record.

I join John Smith, our irrigation district neighbor to the north and west of my district in central Pinal County, in voicing the concerns of this settlement. I would further like to voice our concerns insofar as capacity. What I heard Tom Clark voice earlier even deepens my concern.

I certainly do not want to stand in the way—and neither does, I think, Mr. Smith's district—of coming to an equitable settlement of these Indian water rights claims. Our colleagues in Maricopa County that are a part of this settlement, I can understand their anxieties and wishes to put this problem behind them and go on, and also those of the Indian community.

However, I am sorry that we were not a part of the negotiations. I am also sorry that we did not know about this bill until just a few days ago, when we got time to read it. I think that there are places, if they will address—if they, meaning the parties to the settlement—can address the concerns that we have in Pinal County as agricultural subcontractors to CAP water, I think that we can probably, working on a reasonable, willing basis, come to an agreement that we will not oppose the bill, but as it is presently constituted we cannot do that.

Mr. Chairman, I would thank you for the opportunity of appearing here. I have enjoyed it very much. Thank you.

[Prepared statement of Mr. Pretzer appears in appendix.]

Mr. UDALL. Thanks to both of you. I know the difficulty you have had in weighing whether to come here and be forces for lack of unity, as you are well aware, but I think you are protecting your people and they are important people. They ought to be heard before any final decisions are made, so thanks for coming, and the committee I know will want to weigh the advice you have given us. I appreciate it very much.

Any comments?

[No response.]

Mr. UDALL. Thank you very much.

Mr. SMITH. Thank you.

Mr. UDALL. Our last panel is Mr. C.L. Gould and Mr. Tom Choules from Wellton-Mohawk. Gentlemen.

STATEMENT OF CLYDE L. GOULD, GENERAL MANAGER, WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

Mr. Gould. Mr. Chairman, my name is Clyde Gould and I am the manager of the Wellton-Mohawk Irrigation District. I am accompanied this morning by Tom Choules, our attorney. We want to thank you very much for the opportunity to present comment on this Indian water settlement. We are supportive of what has been negotiated up to this point.

The Wellton-Mohawk project is a Federal reclamation project located in the southwestern part of the State of Arizona. Originally it comprised 75,000 acres, and was reduced to 65,000 under Public Law 93-320. It might be stated from the outset that we really have no direct interest or involvement in the problems related to this Salt River Pima-Maricopa Indian Community water settlement, and neither are we a party to the contract which we understand has been recently executed.

Early on in the negotiations between the Indian community and the other parties to this agreement, it seems as though that there was a stipulation whereby the Secretary would be obligated, or at least requested, to go out to the Colorado River and endeavor to obtain surface water for supplementing this particular settlement. This water was to have a priority predating September 30, 1968, and of course there is no water in the State of Arizona, except in Yuma County, that meets this criterion.

As a consequence, nearly 2 years ago, the irrigation districts in the Yuma area were approached by the Bureau of Reclamation and a member of the Department of the Interior to ascertain whether any water could be made available. Originally, as we considered the request, we were vehemently opposed it. However upon further thought, we agreed to look at the pros and cons of becoming a party to such an agreement. As a consequence, we did extensive research into the district's statistical records followed by technical analysis to ascertain whether any amount of water could be made available.

We had numerous meetings with the Bureau of Reclamation and the representative of the Interior Department to work out language that would establish agreeable, terms and conditions for a water transfer. The water transfer we were considering necessitated the reduction of a portion of the district's irrigable acreage which would require consent of the landowners. Subsequently, we conducted a survey among our landowners to see if they would become willing sellers of any high water use lands under their ownership. We also conducted a public meeting during which all of the landowners in our project were invited to express their opinion to ascertain if we would have general landowner acceptance of the proposal to reduce the project irrigable acreage and a portion of our Colorado River water allocation.

The result of the foregoing effort revealed the fact that the reduction of any district water allocation or retirement of any irrigable acreage was indeed a very, very controversial subject and there was less than unanimous agreement. However, by final decision of our board of directors, we were able to develop a majority position for the accommodation of 22,000 acre-feet of Colorado River water, more on a basis of a concession rather than an absolute willingness.

After an extended analysis of the statistical water use data for our project, we were able to develop a level of confidence whereby we felt we could reduce our Colorado River water allocation by 22,000 acre-feet per year from our 300,000 acre-foot allocation that we currently have to 278,000 acre-feet, diversion less return. This would be made possible by reduction of project irrigable acreage by approximately 2,000 acres of high water land.

The logic for the district participation in the relinquishment of this 22,000 acre-feet of Colorado River water can be summarized in one sentence, that is, we looked at it from the standpoint of the lesser of two evils, neither for which we had too much affection. The first distasteful condition was the release of 22,000 acre-feet, or any of our water as far as that is concerned, and the subsequent reduction of any of our irrigable acreage as countered the other side of the coin, the potential from the Reclamation Reform Act of 1982.

This trade off was the determining factor before our board, and the board decided that relief from the Reclamation Reform Act of 1982 would be of greater value than the reduction of2,000 acres of project irrigable acreage. In order to accomodate relief from the Reclamation Reform Act of 1982, it would be necessary to write off the remainder of our repayment obligation to the Federal Government for construction of the project.

In addition to that we had one other stipulation which Senator DeConcini directly brought to the attention of the committee this morning, and that is that upon the release of this 22,000 acre-feet of water, we wanted it very thoroughly understood, and also would prefer if possible to have it in the actual legislation itself, that there would be no further requests for water from the Wellton-Mohawk without the explicit consent of the board of directors and the landowners within the district. This was brought forward primarily because of the increasing pressures and the tension, so to speak, that is being initiated in the State of Arizona relative to the acquisition of both groundwater and surface waters in the western part of the State on behalf of the municipalities in the central part of the State.

We are very, much concerned about this. We have farmers that are multigeneration farmers, that have been there many, many years, that are definitely interested in agriculture, and are not willing to give up and do not wish to lose the very prime and unique farmland that we occupy at the present time in the Wellton-Mohawk project.

So those are the main stipulations. I assume that our testimony and the resolution with all of the detailed terms and conditions will be incorporated in the record, the hearing record, and also that when the markup session comes, that we would be given the opportunity to participate in this process.

The current bills that are before the committee at the present time, neither one of them are explicit as far as the terms and conditions for the release of this water. They merely state that the Secretary would be granted the authority to go and to acquire 22,000 acre-feet of water from the Colorado River, from a process of willing sellers having a priority in higher than September 30, 1968, which does not address our needs as far as the legislation is concerned. For us to have relief from the repayment and also the Reclamation Reform Act will require congressional approval, so therefore it must be in the bill.

That to a large degree is the status of our position relative to the relinquishment of this water. There has been on a number of occasions the question raised as to whether the water that we are proposing by this contract is actually wet water or paper water. By that I mean whether, I guess, we get down to the situation as to whether the district is currently using its full water allocation.

The answer to that question is yes, for the last two years we have used it. In fact, we have used slightly more than our full allocation, and we foresee that in the near future likewise we would be using our full water allocation. Therefore, in all likelihood there would be no water that would automatically return to the river for allocation to next high priority users, by terms of the law of the river. We have some statistical data in our exhibits that more or less delineates these details, and I don't wish to burden anyone with that data at the present time. However, if there is any need to pursue further, we would be willing to discuss the subject and to go into it in further detail.

Once again, I would just like to reiterate that our primary objective, of course, is to be relieved from the nonproductive administrative burdens and uneconomical constraints of the Reclamation Reform Act of 1982. Beyond that, our landowners have virtually no benefit from this settlement whatsoever.

I will defer to Tom if he wishes to enhance or embellish my statement.

[Prepared statement of Mr. Gould appears in appendix.]

Mr. UDALL. Mr. Choules.

STATEMENT OF TOM CHOULES, ATTORNEY, WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

Mr. CHOULES. Mr. Chairman, Mr. Gould has covered everything very well. I would like to emphasize that our district has only agreed to make this water available on the conditions that he has specified—the freedom from the repayment obligation, the ownership limitations; that we must have some consent that the 2,000 acres or so approximately that are purchased, are purchased from willing sellers, and that we desire to have in the bill itself if possible, or at least in the hearing record, that there is no more water so that we can keep the water—I better not use that term with my friends behind me—the water raiders from coming after more of our water.

You have established precedents in the past that complete this. The Papago bill, you put a statement in the hearing record that would not be a precedent for taking water off the reservation. The Ak Chin settlement, the Indians themselves presented you with a resolution saying they didn't want the right to use that off the reservation.

We thought we were dealing with the Indians directly initially when we started this 2 years ago. We are not parties to the internal settlement that they have entered into. I have some personal feelings relative to the "Winters rights," and we are not dealing with "Winters rights" water here. They never had a claim in the central Arizona area to any "Winters rights" out of the Colorado River, and so I think that is a different entity here and does not create a problem for me in that regard.

But we are most anxious that since this is not part of the bill now, and we have been informed that this will be put on in the markup session, that the language be in the bill itself—because the only way we can get relief from the acreage limitations of the RRA, is by congressional action and signed by the President—that that be put into the bill in markup so that we don't end up at the end with a dispute between us and the ones who are trying to settle it, that we don't have any water available to them. So we would appreciate it if, as you have informed us, that will be taken care of at that time. We of course have direct reliance on you, as we have in the past, and are very comfortable with that.

[Prepared statement of Mr. Choules appears in appendix.]

Mr. Udall. Well, thank you. I don't know whether I welcome this confidence and responsibility, but I am very anxious to get this resolved. The longer these few remaining major water issues in the State go unresolved, the more danger there is of intrastate fighting and difficulty, and it would be a loss to real farmers, so we will be moving ahead. We will try to consult and counsel with you. You have never been slow to give us advice when you think we need it in this committee, and we welcome it.

Mr. Choules. Mr. Chairman, if you wanted to be comfortable, you wouldn't be where you are.

Mr. Udall. Well, I thank you for that.

Somebody was talking about the lesser of two evils a few minutes ago. They had a nasty election down in Texas two years ago, and it was agreed that both candidates for Governor were really scurrilous, inadequate, dangerous kinds of fellows. One said it was a contest between the evil of two lessers. [Laughter.]

Senator McCain has rejoined us.

Senator McCain. Thank you, Mr. Chairman. I apologize for my absence. I was over at an Armed Services Committee hearing. We are marking up the INF Treaty, which is going to come to the floor soon, as you know, and I apologize for not being here to hear the entire witness list. I understand from staff that it has been very valuable hearing, and I again appreciate your making it possible.

Tom, did your people and you want relief from the RRA with or without this legislation?

Mr. Choules. We would like relief from it, yes. If they would let us pay off at the present value of our repayment and relieve us, we would write them a check and keep our water.

Senator McCain. Did you want relief from RRA with or without this legislation?

Mr. Choules. We cannot get relief without the legislation, Senator—

Senator McCain. I understand that.

Mr. Choules. [continuing]. But yes, we would like relief.

Senator McCain. Did you want relief before this legislation was considered?

Mr. CHOULES. Yes; we have been after relief from the legislation before it was ever drafted. [Laughter.]

Senator MCCAIN. That's what I thought. As I mentioned to you in my office, you and a substantial number of people throughout the West that have been significantly affected by this legislation, perhaps you can illuminate me as to the tie- in between the requirement for your relief from the RRA and this legislation, since you didn't like the legislation, the RRA, to start with?

Mr. CHOULES. Senator, the quid pro quo for us giving up any water is relief from that legislation. Without that, we get nothing from this. We are not willing to give up the water. That basically is what we are asking in exchange for making the 22,000 acre-feet available, losing 2,000 acres that would be paying part of the O and M costs for the rest of the district and all that goes with it, so without the relief from the Reclamation Reform Act, we have absolutely no interest in participating at all.

Senator MCCAIN. I think you have made that very clear, but I am trying to make clear for the record that you were opposed to the RRA to start with, from the beginning, before this legislation ever came into view for you. Is that correct?

Mr. CHOULES. We were opposed to some of the ownership limitations, Senator.

Senator MCCAIN. That is exactly what you are seeking relief from now. Is that right?

Mr. CHOULES. Yes, sir.

Senator MCCAIN. OK. Thank you very much.

Mr. Chairman, thank you.

Mr. UDALL. Does anyone want to be heard before we adjourn these hearings?

[No response.]

I think they have been very useful. We thank all of you for coming, and the committee stands in recess.

[Whereupon, at 12 noon, the committees adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF JAMES W. ZIGLAR
ASSISTANT SECRETARY FOR WATER AND SCIENCE
U.S.DEPARTMENT OF THE INTERIOR
ON
S. 2153 AND H.R. 4102
THE SALT RIVER WATER SETTLEMENT ACT
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
MARCH 24, 1988

Chairman Inouye, Chairman Udall, members of the committees, I appreciate the opportunity to appear before you today to present the Administration's position on S. 2153 and H.R. 4102, the proposed Salt River Water Settlement Act.

The Administration strongly opposes enactment of S. 2153 and H.R. 4102 as written for a number of reasons, including financial. Also, the Department of Justice is reviewing potentially serious legal problems with the legislation and will present its views in a report to be submitted in the near future to the Committees. The Administration continues to advocate negotiated settlement of Indian water rights claims. We appreciate the efforts undertaken by the Salt River Pima-Maricopa Indian Community (Community) and the many participating non-Indian organizations in Arizona to achieve settlement. However, unless the settlement agreement is significantly amended to address our concerns, the Department of the Interior will be required to consider

54

seriously whether it should recommend that the President not sign the enabling legislation. We do not believe that such action will be required since we are confident that all parties will be able to resolve their differences.

The Administration also is concerned about the process by which the proposed settlement before us today was achieved. Until approximately April 1987, representatives of the Departments of the Interior and Justice were participating in the negotiations with the non-Federal parties on settlement terms. At that time, the Administration made its best offer of an acceptable level of federal contributions to the settlement. The non-federal participants viewed the offer as insufficient, and the federal representatives were excluded from further negotiations.

Negotiations resolving Indian water rights issues involve complex legal, equity and budget issues. Exclusion of a major party from the final round of negotiations means that a balanced settlement is unlikely to be produced, and sets a very adverse precedent for the resolution of dozens of active or potential Indian water claims across the western U.S.

In our view the proposed settlement is primarily intended to settle Indian water rights claims against non-federal entities in the Phoenix area. However it presents a very expensive bill for the federal government to pay, which we believe is unjustifiable and unfair to federal taxpayers across the Nation. Last year, we offered $45 million as the total federal contribution to resolve both the Salt River and Fort McDowell claims. S. 2153 and H.R. 4102 would authorize federal payments that nearly double this amount to be paid just to the Salt River Pima-Maricopa Indians. In contrast, the non-federal contribution to the proposed settlement would mostly be in-kind water rights that amount to substantially less than the water the Tribe would probably acquire if it continued to litigate its "Winters Doctrine" claim. Nonetheless, although we are strongly opposed to this bill in its present form, we remain willing to explore avenues of achieving a settlement with more reasonable costs to the U.S. taxpayer.

The Department of the Interior acknowledges that it has a trust responsibility to the Community and its members. It seems reasonable that the Community should have the opportunity to benefit from federal investment in water resource projects in Arizona. However, it is this same federal investment, both what has already occurred and what is proposed for the future, that makes us view the potential costs of this settlement to the United States as excessive.

According to our latest budget figures, the estimated federal cost of the Central Arizona Project, that is the cost of the project less the funds contributed by Arizona organizations and the costs allocated to Indian features of the project, is approximately $3 billion. Even though $3 billion is an impressive figure, the value of having a reliable transportation system for Arizona's entitlement to Colorado River water is substantially greater than $3 billion.

Furthermore, the federal government has invested about $60 million in the Salt River Project for the benefit of non-Indians. I must point out that most of these expenditures were made in the early decades of this century, so the $60 million would be considerably greater when evaluated at today's costs.

Thus, the federal government was responsible for the initial investment in constructing the Salt River Project and is spending substantial sums of money to complete the Central Arizona Project. The value of these projects is significantly in excess of the basic construction costs. I submit that these points have not been accorded sufficient weight in the judgments on the relative federal and non-federal contributions to this settlement.

The local cost sharing proposed in the settlement is substantially in the form of water supplies to be committed to the Community. The proposed federal contribution is essentially in cash. Therefore, the relative value of the federal and non-federal contributions depends greatly on the value accorded the water supplies being contributed by local entities.

The local contributors have placed a value of $3,000 per acre-foot on the 32,000 acre-feet they are committing to the community, for a total of $96 million. Although we are reluctant to stipulate the value of the water involved in the settlement because of potential litigation against the Bureau of Reclamation by the Salt River Project, a few observations are in order. Pursuant to the settlement terms, the City of Phoenix will execute a lease agreement with the Community wherein it will pay approximately $1,000 per acre-foot for water, with the federal government paying the transportation costs. Although this is, essentially, a marketing arrangement, the $16 million in lease revenues has been counted as a local contribution to the settlement.

We also note that the Salt River Pima-Maricopa Indian Community has a significant "Winters Doctrine" claim to a portion of the water supply for the Salt River Valley. This claim is against local, non-Indian water users. Given these facts, we strongly question whether the federal government should incur yet another $78 million of expense for a settlement that, although it clearly benefits the Indians, undoubtedly provides substantial benefits to the non-Indian community that is most at risk.

As I have said previously, both the Department of the Interior and the Department of Justice have basic concerns about this proposed settlement and implementing legislation. Nevertheless, I reiterate that we believe the settlement of these nettlesome issues is in the best interests of the Community and the people of Arizona. With that thought in mind, we have the following preliminary comments as to portions of the proposed settlement that can be explored as a way of substantially reducing the federal cost of the settlement.

First, the Department is concerned that, in the face of continuing regional development, the Community may be unable to remain as an agrarian society. We do not question the Community's sincere desire to avoid the industrialization and urbanization of its lands. The Community's leaders and membership have repeatedly and forcefully asserted their objective to maintain a homeland oriented to agriculture, and an economy supplemented by light industry and commerce on the periphery of its reservation.

However, the Community is rapidly being surrounded by commercial and urban development in the Salt River Valley. With that development comes the prospect of increasing wealth for those who have a developable and assured water supply. Will succeeding generations of Pima and Maricopa Indians be satisfied to make a living from agriculture while their non-Indian neighbors enjoy the wealth associated with alternative uses of their resources? We cannot predict the long-term outcome of this scenario, but we must raise the question because the federal government is being called upon by this legislation to finance a significant portion of the distribution system for the Community.

The maintenance of an agricultural enclave in the Salt River Valley may help in bringing economic self-sufficiency to the Community; however, we believe it would be prudent for the Community to at least reexamine its goals, with the idea of possibly allowing for a different mix of agricultural, urban, and commercial development on its lands. We are willing to participate in assisting the Community's economic development, but not to the extent of contributing $63 million to rehabilitate an existing irrigation system and build new irrigation delivery facilities that may be abandoned in favor of other uses in the future. We believe it is appropriate to call the Committee's attention to this issue.

Second, we note that the estimated rights-of-way (ROW) costs in the settlement for rehabilitation of existing systems and new irrigation facilities for the Community range between $35,000 and $75,000 per acre, with most ROW over $50,000 per acre. Total ROW costs are estimated to be $11.6 million. At the same time, the Bureau of Reclamation has incurred ROW costs of about $300 to $3,700 per acre for construction of Central Arizona Project non-Indian distribution systems.

It seems incongruous for the Community to express its intention to maintain itself essentially as an agrarian society, but to include as part of its proposal ROW costs of this magnitude which do not correlate with the value of agricultural lands. We believe that there is a further opportunity to reduce the cost of the Community's total distribution system, and the corresponding federal contribution to the settlement by reducing ROW costs both through a reduction in the scope of the proposed irrigation development and through a reassessment of the ROW acquisition costs.

Third, the settlement contemplates that the federal government will acquire land and associated water rights along the Colorado River so that 22,000 acre-feet of water can be imported to central Arizona for replacement of local supplies being provided to the community as part of the settlement. On the assumption that reformulation of the Community's development plans is considered, there may be an opportunity for the Community to lease back to local municipalities another portion of the water supply it would receive under the settlement. For example, rather than having the federal government incur the expense of replacing 20,000 acre-feet of local water with 22,000 acre-feet of Colorado River supplies, the Community could lease the water. This would eliminate the need for the federal government to purchase the water and save the taxpayers $14 million. The non-Indian municipalities in the Salt River Valley would then have continued use of the water and the Community would have additional cash resources.

Finally, we are disappointed by the small financial contribution expected from the State of Arizona. We understand that the State is experiencing a shortfall in revenues to cover its expected expenses. The federal government, as this committee is well aware, is faced with a similar situation on a much larger scale. It seems to us that the State of Arizona has not sufficiently considered the potential benefits to be gained from the settlement for Arizona citizens.

Because of the complexity of the proposed legislation, both the Department of the Interior and the Department of Justice have a number of substantive technical comments on the proposed legislation that we intend to offer in writing in the near future.

It is indeed unfortunate that we could not come here today with all of the issues worked out between the Administration and the non-federal parties to the settlement. Much hard work has gone into the settlement proposal. We believe that work has not been wasted since it provides a foundation for further negotiation of the contributions and other aspects of a comprehensive settlement. We would like to affirm our interest and desire to reengage in negotiations with the non-federal parties so that a final settlement can be achieved.

This concludes my statement. I would be happy to answer any questions the committees might have.

60

PREPARED STATEMENT OF GERALD ANTON, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL

The effect of the Salt River Pima-Maricopa Indian Settlement, including the enabling legislation, is to put an end to old wrongs to the Pimas and Maricopas of the Salt River Community and to give them a fresh start. It arises from comprehensive water litigation which, if followed to final judgment, would likely wreak dislocations and foster new generations of controversies. It looks forward to a new relationship between the United States and the Salt River Pima-Maricopa Indian Community based upon dignity and self reliance rather than dependence.

The Settlement is fair to every person in every respect. It certainly does not give benefits to the Community that it is not entitled to. The amount of water allocated to the Community lands, while sufficient for reasonable economic needs, is about one-half of the amount the Community responsibly claims in pending litigation. The financial provisions of the Settlement certainly do not constitute a grant or subsidy to the Community but rather a rational compromise designed to place it for the first time into a position of equality with its neighbors. The urgent interests of all of the Community's neighbors are recognized and accommodated. Long-standing tensions within the region are eased.

The financial provisions have the effect of extinguishing the claims of the Community against the United States for past wrongs and to foreclose any potential claims in the future. But that is not their principal effect. The significant effect of the Federal financial contribution is to enable the Community to achieve a new self-reliance and self-sufficiency. It is an assistance that is critically needed by the Pimas and Maricopas of the Salt River Community in their struggle and determination to earn their own way free of the cycle of dependence upon Federal welfare programs that merely sustain the status quo. In this sense the Settlement is much more than a righting of past wrongs. It is an investment in a new era.

The Salt River Community has proven its industry and initiative when given fair opportunity. Twelve years ago it recovered through litigation reservation sand and gravel lands that had been claimed by non-Indian interests under patents and claims recognized by the Bureau of Land Management. That court victory was sealed by an Act of Congress permanently settling all conflicting claims to this land. Today the Salt River Community operates a modern and efficient sand and gravel enterprise on this land which has grown to be the tenth largest in the United States. In addition to providing employment for its members, the sand and gravel enterprise provides revenues that are needed to replace the diminishing Federal programs.

Last year the Community purchased a cement manufacturing plant which complements the sand and gravel business. The cement assets are substantially mortgaged at this time but the Community will develop a valuable equity in them through industrious and efficient management in the years to come. We have demonstrated that the Community has the kind of management leadership that is required to compete successfully in these times.

The Community's program for achieving economic self-sufficiency now requires that it enjoy an equal and fair opportunity to develop its agricultural resources. Agriculture has been central in the Community's traditional economy and it holds a central place in its plans for the future.

It may not be customary these days to think of agriculture as the business of the future. But the circumstances here are special. Consider the changes taking place in the Salt River Valley.

Until the development of urbanization in the post World War years the area involved in this Settlement was a farm belt. The desert lands of greater Phoenix lay within a Federal reclamation project which controlled the water resource and delivered irrigation water to 238,000 acres. Salt River Community lands were within the project boundaries but were excluded from participation in project benefits by a Federal policy that favored non-Indian lands.

The urbanization process has now reduced the project agricultural area to 70,000 acres and, by the end of this century, all non-Indian project lands will be retired from agriculture.

This urbanization has not taken place on the Salt River Reservation and it never will. The people of the Salt River Community have an ancient agricultural tradition which is a dominant element of its culture. Twenty two hundred years before the Federal Government took control of the water resource for the benefit of the new settlers the ancestors of the Pimas farmed the desert lands through a sophisticated system of canal irrigation. The Community is not disposed to abandon that tradition. It is the firm resolve of the Community to maintain a fundamentally agricultural economy, a resolve which is reflected in the Community's comprehensive land use plan and its zoning ordinance.

As a result of these two developments-the total urbanization of non-Indian project lands and the allocation of new water supplies to reservation lands-the Salt River Pima-Maricopa Indian Community will become the vegetable garden of the Salt River Valley. The opportunity to achieve this objective is now at hand. If the opportunity is not seized now it may be lost forever.

The Salt River Community looks upon the Settlement as an opportunity to enter into a new era of self reliance. But some will question the extent of the Federal obligation toward this objective. We should confront this consideration candidly.

An important consideration here is that the cost of the Settlement to the Federal Government is not nearly as much as the amounts authorized by the proposed legislation. The Federal cost of enabling the Salt River Indians to become independent of the usual array of Federal Indian programs is an investment rather than an expense in that it will almost certainly reduce Federal expenditures in all future years. In this case beneficent policy is an economical policy.

Furthermore, the Federal Government is not a bystander in the problems that give rise to the Settlement. It has been the prime actor. It has been Federal Indian policy as applied in the Salt River Valley that has been the direct cause of the cycle of poverty and dependence that the Community is attempting to resolve. It is well here to review briefly the pertinent Federal activity in the Salt River Valley.

The modern history of the Salt River Indian Community is an aspect of American settlement in Central Arizona. Beginning in the 1870s the United States, as part of its Manifest Destiny policy, began to encourage white settlement in the Salt River Valley and parcelled out land to the new pioneers under the Homestead laws. Indians were not then entitled to acquire title to Federal land and, in some cases, unscrupulous settlers made homestead filings on lands farmed by Pimas and Maricopas along the Salt River.

The actions taken by the United States in response to this initial confrontation between the Indians and the new settlers was decisive and just. On November 24, 1878, Army Captain Adna A. Chaffee reported to his superiors that the attempted land grab by the white settlers was "*nothing less than a legal steal.*" On December 23, 1878, General Erwin McDowell, Commander of the Military Division of the Pacific, reported to General Sherman that:

> "There is no question in my mind as to the duty of the United States Government toward these Indians, who did more to give peace and security to Arizona than all the white troops combined, and who are not nomads but farmers and intelligent people, fully susceptible of being civilized. The U.S. should at once take measures by injunction or otherwise to restore to these Indians the rights to water to which they are entitled."

On the basis of the report and recommendation of General McDowell, President Rutherford B. Hayes, by order dated June 14, 1879, set aside the Salt River Indian Reservation and, to protect the primary interest of the Salt River Pimas and Maricopas to irrigation water, fixed the boundary of the Reservation along the middle of the Salt River.

Through the years of this century the United States has not acted to protect the Salt River Community from the adversary interests of the new settlers. Indeed, the United States has taken a series of actions which were enormously unfair and which have severely disadvantaged the Community. The following are examples of United States actions against the interests of the Salt River Indian Community which caused the conditions leading to the litigations and the Settlement.

--The United States acted to defeat the Salt River Community's lawful claims in early water rights litigation. In 1905, in anticipation of its operation of a comprehensive water conservation and distribution system for the Salt River Valley, the Bureau of Reclamation prevailed upon the homesteaders in the Salt River Valley to undertake a comprehensive water rights adjudication. At that time water distribution in the Salt River Valley was administered by a series of independent canal companies. In response to the Bureau's request a prominent farmer, Patrick T. Hurley, sued Charles F. Abbott and 4,800 others to adjudicate their respective rights in the Territorial District Court. The canal companies were apprehensive over the consequences of this lawsuit so they formed a group of representatives, known as the Committee of Sixteen, to work out a settlement. Court proceedings were at a virtual standstill until the Committee arrived at a comprehensive stipulation on May 18, 1907. The Salt River Indians were not represented in the Committee's proceedings and all the Committee members had interests adverse to those of the Salt River Indians. Under these circumstances the Committee resolved that the Salt River reservation should be allowed a mere 500 miners inches. Shortly thereafter, United States Attorney J.L.B. Alexander, who had been representing one of the canal companies in the lawsuit in the course of his private practice, intervened on behalf of the Indians of the Salt River Reservation and sought for them an adjudication of the 500 miners inches as allocated in the Committee's stipulation. At that time the *Winters* doctrine, holding that Indian reservations enjoyed reserved rights for all their irrigable acreage, was well known because it had been applied on three occasions by the Ninth Circuit Court of Appeals. Under the *Winter's* doctrine, the 1879 Executive Order creating the Salt River Reservation as an agricultural homeland for the Pimas and Maricopas impliedly reserved for reservation lands 8,100 miners inches. Yet Alexander, purporting to represent the Salt River Indians, sought to limit the Salt River Reservation to less than one-sixteenth of their clear lawful entitlement. In the end Judge Kent, who presided over *Hurley v. Abbott*, on his own initiative raised the Reservation's entitlement in the final decree from 500 to 700 miners inches. The Kent Decree condemned the Salt River Community to poverty. The Salt River Indians could barely stay alive on this allowance. The United States in this case acted entirely on behalf of adversary interests and it has never taken any action to amend the decree.

--*The United States excluded Community lands, and no other lands similarly situated, from participation in the benefits of the Salt River Reclamation Project*. Immediately following the enactment of the Reclamation Act in 1902 the Interior Department undertook the planning and development of the

Salt River Project. This involved the capture and control of the flow of the Salt and Verde Rivers and the distribution of that water within a project area in the Salt River Valley which was fixed by the Secretary. The centerpiece of the Project was the Roosevelt Dam on the upper Salt River completed in 1911 with a storage capacity of 1.3 million acre feet. Five more dams were constructed in later years. With these conservation facilities the Federal Government developed the capacity to serve water to all lands within the project boundaries whether or not they had a decreed water right. By 1927 the Interior Department had conferred project developed water rights on 150,000 acres of project lands that had decreed rights and on more than 87,000 acres of project lands that had no decreed rights. By that time, 1927, all lands within the project boundaries owned by white people enjoyed project benefits. The Salt River Community lands within the project boundaries were uniquely excluded from project benefits. The Community has formally petitioned the Federal Government to discontinue this discrimination but the discrimination continues.

--The Federal Government has refused to deliver water rights to Community allotted lands as directed by act of Congress. In the Indian Appropriations Act approved on May 18, 1916, Ch. 125, 30 Stat. 123, Congress directed the Secretary "to provide for water rights in perpetuity for the irrigation of 631 allotments of 10 acres each [with] water from works constructed under the provisions of the Reclamation Act*." The 1916 act, designed to provide the Community with 35,000 acre feet per year, appropriated $20,000 for the initial cost of this water and an additional $15,000 was appropriated for this purpose in each of the next three years. The Director of the Reclamation Service in 1916, A.P. Davis, refused to carry out these provisions on purely racial grounds arguing that "the inclusion of Indian lands will of course exclude a portion of the lands owned by white people." Accordingly these four appropriations were never spent. No water was ever delivered pursuant to the 1916 act until 1939 when the Salt River Community began to receive water from the new Bartlett Dam on the Verde River. Bartlett Dam deliveries are 20,000 acre feet per year or less. The benefit promised in the 1916 act has been denied to this day.

The foregoing are examples, and not the sum total, of actions taken by the United States that were adverse and unfair to the Community. They are advanced here not as an exercise in recrimination. They are recounted for the pertinent purpose of illustrating the basic fact that the United States has been not merely a participant in the events which necessitate this Settlement but has been the central actor.

We should not conclude this statement without a comment on the negotiations which have lead to this settlement. They have brought together the leaders of the major irrigation districts, all of the cities, the Salt River Community and other important interests in the Salt River Valley. They worked together on the most vital single issue in the Central Arizona desert. At the outset we were divided by old walls of suspicion and distrust. Over countless days of hard and often tense bargaining those old walls began to crumble. In the end we all came together and we achieved a new spirit of understanding and cooperation that will serve us well in the future. For this we thank all of our neighbors. And we thank you for your kind consideration.

71

JIM KOLBE
5TH DISTRICT, ARIZONA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, AND JUDICIARY

SUBCOMMITTEE ON MILITARY CONSTRUCTION

FILE COPY

Congreſs of the United States
House of Repreſentatives
Washington, DC 20515

WASHINGTON OFFICE
1222 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2542

ARIZONA OFFICES:
1661 NORTH SWAN ROAD, SUITE 112
TUCSON, AZ 85712
(602) 322-3555

222 COTTONWOOD LANE, SUITE 113
CASA GRANDE, AZ 85222
(602) 836-4364

77 CALLE PORTAL, SUITE B-160
SIERRA VISTA, AZ 85635
(602) 458-3115

TESTIMONY OF REPRESENTATIVE JIM KOLBE
REGARDING HR 4102
THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER SETTLEMENT

MARCH 24, 1988

Mr. Chairman, thank you for permitting me to offer some observations and comments regarding this water settlement. I'm pleased to associate myself with the effort surrounding HR 4102, legislation to settle the water rights claims of the Salt River Pima-Maricopa Indian Community. Unfortunately, the relationship between the Native American communities and the state of Arizona has not always been constructive. The question of unresolved water claims haunts us as our state experiences unbridled growth, and increased demands for that precious resource. But this growth cannot continue without a recognition of the elemental rights of this community.

We all recognize the immense amount of work required to bring the parties together on a settlement like this. Indeed, the rich and complex history -- legal and political -- of Arizona allocating scarce water, in concert with the Government's trust obligations to Native Americans, make the actual introduction of HR 4102 hardly short of miraculous.

Therefore, it's not surprising that the enthusiasm for this bill may be rather muted in some quarters. Each of the parties to the settlement have had to give in order to get. In the long run, settlement of the Indian Community's claims provides long term stability to at least a portion of Arizona's water future. It will clarify, for all time, the relationship of the Community with its neighbors over water rights. The resolution of this dispute removes any uncertainty, and gives planners a framework with which to plan water management and conservation strategies. And there's general concurrence that negotiated settlement of these claims is vastly superior to litigated settlement. This way, each of the players at the negotiating table feels as if their concerns were truly heard.

This bill also utilizes a cost sharing approach that is beneficial to the federal government's interests. The federal costs of this bill include $1 million CAP repayment forgiveness to secure seasonal storage rights to reregulate existing tribal water behind the modified Roosevelt Dam, $16 million for a trust fund for Community development so that the tribe can put the settlement water to use, and $14 million to secure 22,000 acre feet of Arizona's Colorado River water supply which would then be traded by the tribe for 25,000 acre feet of Salt and Verde River waters for the Tribe.

On the other hand, the local entities are contributing $16 million to the trust fund in exchange for a water lease right, plus as much as $3 million per year for costs associated with delivery of the Colorado River water to the Indian Community. Finally, the State of Arizona will contribute $3 million to the settlement, and the tribe itself is making a significant contribution to the trust fund.

I must acknowledge here, however, the strongly held concerns of parties who were not as intimately involved in the negotiation of this settlement, but who nonetheless feel that their interests are at stake here. The Maricopa-Stanfield Irrigation and Drainage District, the Central Arizona Irrigation and Drainage District, and the New Magma Irrigation and Drainage District have expressed to me a number of their concerns. They, too, acknowledge that a negotiated settlement is superior to litigation, but they, and I, have questions about the effect of some this bill's transfers and reallocations on the pool of agricultural water available to Arizona's farmers. I will not judge here the weight of their complaints, but I do urge this Committee to listen closely to the Districts' testimony, and to weigh their concerns carefully. They deserve a place at the table, too.

As with any complex arrangement of this sort where two fundamental resources, water and money, are at stake, the work done thus far serves merely as prelude to continued discussion among all parties. I anticipate this discussion to be spirited, but constructive, with the goal of achieving a comprehensive settlement on behalf of the Indian Community.

73

Testimony of the Arizona Cities of
CHANDLER, GLENDALE, MESA, PHOENIX,
SCOTTSDALE and TEMPE, and
The Arizona Town of GILBERT

to the

Joint Hearing of the

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

and the

HOUSE OF REPRESENTATIVES

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

in support of

HR 4102

and

S 2153

TO PROVIDE FOR THE SETTLEMENT OF

THE WATER RIGHTS CLAIMS OF THE

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

IN MARICOPA COUNTY, ARIZONA

March 24, 1988

74

The Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert, all incorporated municipalities within Maricopa County, Arizona (hereinafter referred to as the Cities), greatly appreciate the opportunity to offer testimony in support of the settlement of the longstanding water rights claims of the Salt River Pima-Maricopa Indian Community. The Indian Community resides on a reservation created in 1879 on over 50,000 acres of land located within Maricopa County and neighboring the Cities. These Cities collectively represent over 80 per cent of the approximately 2.1 million people within the County.

As often occurs among neighbors, the Cities and the Indian Community have been engaged in longstanding disputes over the allocation of Arizona's scarcest and most important natural resource, water. Disputes involving significant claims against the federal government, some of which involve only the federal government and the Indian Community, are also of concern. The settlement which the Cities helped craft, and which we bring before you, resolves all of these claims and does so in a manner which we believe to be fair and equitable to all parties, including the federal government. Having made that assertion, we would like to use the balance of this testimony to identify for you the major elements of this settlement agreement, and to demonstrate to you why we believe they are fair to all parties and deserve your support.

First, a little more on the nature and extent of the disputes will be helpful. Generally speaking they spring from two major causes. First, some of the disputes arise from conflicts over the use and allocation of surface water within the region. The rest of the disputes result from competition over the use of groundwater. The Indian Community, setting astride the Salt River as it does, and with a longstanding history of cultivating its land and diverting and using the water of the Salt River, asserts that it has been systematically denied a fair share of the Salt River's water by actions of its neighbors as well as actions and inactions of the federal government. These assertions are the subject of four separate lawsuits currently pending in state and federal court. In addition, the United States on behalf of the Salt River Indian Community has filed suit against the Cities and numerous other parties for damages caused as the result of groundwater pumping within the Salt River Valley. All of these suits, as well as a related lawsuit among some of the other parties, not including the Indian Community, will be settled by this bill.

Without this bill, the settlement can not become effective, and the parties, including the federal government, will be forced to resolve their disputes in court, with all of the attendant expense and uncertainty. Even then, the disputes will not be finally resolved. The State of Arizona is currently undergoing a massive general stream adjudication, known as the Gila River Adjudication. Without this settlement, the Indian Community, represented by the Department of Justice with the support of the Department of Interior, will have to assert and defend the Community's claims as against all other claimants in this lengthy and expensive proceeding. This settlement obviates that problem as well.

Clearly then, there is a need on the part of all parties, including the federal government, for the settlement of these disputes. But is this an appropriate settlement? Have the interests of all parties been adequately represented? Is it fair to all parties? More particularly, is it fair to the Indian Community and the federal government?

We believe the answer to each of these questions is an unequivocal yes.

The Indian Community has been represented from the beginning by independent counsel retained by the tribal government as well as by officials of the tribe. The Salt River Project has likewise been represented from the beginning by key staff, independent counsel, and appointed and elected officials of the organization. The federal government, while it was actively present in the negotiations, was represented by staff of the U.S. Bureau of Reclamation, and officials from the U.S. Interior Department.

The negotiations were conducted in three phases. The initial negotiations required about two years and were tripartite, involving the Indian Community, the Salt River Project and the federal government. During these negotiations the basic framework for the settlement was established, including most importantly, the Indian Community's water budget and fiscal needs.

Once the triad had reached agreement among themselves, they expanded the circle of negotiators to bring in the other immediately affected parties---to bring, so to speak, the beneficiaries and the potential contributors to the table. At that time the table became quite large. All of the Cities were included as well as two irrigation districts each of whom later became a contributor to the settlement. The triad also brought in the Central Arizona Water Conservation District, which as the operator of the Central Arizona Project will transport some of the water involved in the settlement, and the Arizona Department of Water Resources, which oversees of the State's water resources.

Thus began the second phase of the negotiations which was led and facilitated by a representative of the Interior Department. After explaining the basic logic and rationale of the first phase tripartite agreement, the serious business of determining who was

76

to contribute and what was to be contributed, began. From the onset, the Interior Department representative made it clear that any settlement agreement which was to win the support of the administration and ultimately Congress must contain a substantial local contribution. The Secretary's representative stated forcefully that while these disputes were partially a federal problem they were ultimately also a local problem.

The third and final phase of the negotiations was concluded in the absence of the Secretary's representative. During this phase, which extended for over a year, selected representatives of the most affected parties, that is those who were contributing the most to the settlement, met on an almost continuous basis to hammer out the final details of the agreement and to draft the literally hundreds of pages of supporting documents and related agreements.

Having set the stage by describing the need for the settlement as well as the players and the process, let us now turn our attention to the specific elements of the agreement. First, and perhaps foremost, this agreement will settle permanently all appropriative rights claims, federal reserved rights claims, and aboriginal rights claims of the Salt River Pima-Maricopa Indian Community to surface water and will settle the Community's rights to groundwater. Second, this settlement will dismiss, with prejudice all pending lawsuits, and will result in a stipulation concerning these settlement matters being entered in the Gila River Adjudication. Third, it will extinguish all independent claims to water of the individual members of the Indian Community and the tribal allottees. Fourth, it will provide the Indian Community with a perpetual water right to sufficient surface water and groundwater to develop the Community's lands in the most appropriate manner. Fifth, it will furnish the Indian Community with adequate financial resources to allow for the beneficial and productive use of the water resources provided them under this settlement. Finally, it will allow all parties, Indian and non-Indian alike, to plan for the future use and development of their water resources in cooperation rather than in conflict, and with certainty rather than uncertainty.

These are the major accomplishments of this remarkable agreement which we bring before you in HR 4102 and S 2153. Let us examine the specifics a little closer. The first step in the negotiation process was a technical examination of the reservation to determine how many of the reservation's 50,000 plus acres could be economically irrigated in the future. This process established what is commonly referred to as PIA or "practicably irrigable acres". These PIA when multiplied by a normal duty of water per farmed acre produce one measure of the maximum extent of the Indian Community's reserved water rights claims. The triad agreed that the appropriate measure of PIA for purposes of a settlement agreement for the Salt River Pima-Maricopa Indian community was 27,200 acres.

Next the triad had to agree upon a reasonable duty of water for each acre. At this juncture a critical decision was made. The parties recognized that the duty of water necessary to economically farm an acre of land in Maricopa County was in part a function of the kind of irrigation system used. A modern efficient system could be designed to irrigate the crops traditionally grown on the reservation which would use less water than systems currently employed in the area. However, such a system would be more expensive to build.

Here the Salt River Indian Community made a major concession to facilitate the settlement. They agreed to accept a water duty substantially lower than common practice in the area, provided that the settlement agreement included sufficient funds to underwrite the Community's more expensive irrigation system. The Community agreed, for purposes of this settlement, to accept a water duty of 4.5 acre feet per acre per year, for a total amount of 122,400 acre feet per year (27,200 acres x 4.5 acre feet per acre per year) of water. Related technical and economic studies indicated that approximately $70 million to $100 million would be required to rehabilitate the Community's existing farm lands and irrigation systems, and to subjugate the balance of the PIA.

At this point, the triad had established the basic water and financial budgets for the agreement. The next major question was where would the money and the water come from? Fortunately, some of each was already available to the Indian Community. The Community had historically received about 33,000 acre feet per year of Salt River water as a result of the Kent Decree of 1910, and the federal investment in Bartlett Dam in the 1930's. They also had an allocation of 13,300 acre feet per year of Central Arizona Project (CAP) water and, under the CAP legislation (P.L. 90-537), were eligible for an estimated $20 million in financial support to build the needed distribution systems on the reservation. Additionally, the Community was entitled to and has historically received federal financial support under the Snyder Act to rehabilitate their existing irrigation system. This source of assistance was later estimated to yield about $17 million toward support of the settlement.

Only 76,000 acre feet of water and about $40 million to $60 million were left to be found.

Next the triad turned their attention to closing the gap in the water budget, which they knew would be the most difficult and controversial part of any settlement package. The Salt River Project was the first to step forward. The Salt River Project determined that through a combination of reoperation of their reservoir system and the use of limited seasonal storage capacity, it could increase the amount of Kent Decree and Bartlett Dam water readily available for use by the Community by about 5,000 acre feet per year. After careful examination of its system the Salt River Project also determined it could justify, as a part of a comprehensive settlement package, an additional 9,000 acre feet per year of water for use on reservation lands lying within the boundaries of the Salt River Project.

The water deficit was now reduced to 62,000 acre feet per year. By agreeing that the Indian Community could rely on a longterm "safe yield" groundwater supply of almost 34,000 acre feet per year, the water deficit was further reduced to 28,000 acre feet per year. However, the Indian Community was troubled by the expense of having to pump so much groundwater to meet its longterm needs. Surface water from the Salt River is the least expensive water in the region, having a cost of one third to one fifth that of groundwater. For economic reasons, therefore, the Indian Community was interested in reducing its long term dependence on groundwater.

The Interior Department representative felt the water budget deficit could be further reduced by about 20,000 acre feet per year through the acquisition of some of Arizona's Colorado River water supplies currently being used for irrigation in western Arizona. Such an acquisition has already been used to settle a previous water rights dispute with the Ak Chin Indian Community.

At this juncture in the development of the settlement agreement, the triad agreed to expand their circle to include the other affected parties. What was presented to the other parties was a consensus water budget, a related financial budget, and the elements of the water and financial budgets just described. The enlarged group was informed that additional water and money were needed to complete the settlement and that at least part would have to come from the new participants if they wanted a settlement acceptable to the administration and Congress.

Without describing the numerous and difficult compromises needed to achieve consensus from this point, let us simply describe the final outcome of the balance of the negotiations, a process which consumed another year and a half. The Roosevelt Water Conservation District agreed to provide 8,000 acre feet per year of Salt River water to the settlement. In return, the District's existing contract with the Salt River Project for delivery of its Salt and Verde River water rights will be affirmed and extended for 50 years. In addition, the District's Central Arizona Project contract would be amended to better identify the extent of future conversions of CAP agricultural water to CAP municipal and industrial water and to help facilitate the Cities' exchange of Colorado River water.

The Cities agreed to provide the Indian Community with 20,000 acre feet per year of their Salt River Project water supplies in exchange for 24,000 acre feet per year of additional Colorado River water. While the Cities benefit from the extra water in normal and surplus years on the Colorado River, they will receive substantially less water than they give up during shortage years on the Colorado River, a condition which the Arizona Department of Water Resources estimates could occur as often as every third year after the turn of the century. The Cities will also have to pay the difference in operation and maintenance costs between the CAP supplies they receive and the Salt River supplies they have given up. These costs which will add up to over $150 million over the next 100 years and have a net present value conservatively estimated at $17 million.

Furthermore, the City of Phoenix will provide up to 10,000 acre feet per year of Salt River water to the Indian Community obtained though a three-way exchange of the City's wastewater effluent with the Roosevelt Irrigation District and the Salt River Project. The Indian Community will receive one acre foot out of every three exchanged. The City of Phoenix will also absorb the costs associated with the additional treatment and the exchange. An investigation is currently underway to determine what treatment system will be required to produce effluent of a quality adequate to allow for this exchange.

The City of Phoenix has also agreed to lease the Indian Community's 13,300 acre feet per year CAP entitlement for a 99 year period commencing in the year 2000. For this lease, the City will make an immediate contribution of $16 million to a Community trust fund to help underwrite the cost of this settlement.

Finally the State of Arizona and the Community itself have been asked to contribute $3 million and $2 million, respectively, toward the trust fund to complete the local contribution. The local contributions to this settlement include $21 million in up-front cash, $150 million ($17 million net present worth) over 100 years in increased operation and maintenance costs for the Colorado River water exchange and $96 million worth of water valued at current replacement costs for domestic supplies, for a total present value of $134 million. The federal contribution is $77 million plus future Court of Claims costs and some limited federal forgiveness of repayment obligations. Only $30 million of the federal obligations would require new authorizations, because the balance of the money will come from existing CAP or Snyder Act authorization, or from Court of Claims settlements.

In summary, the Cities believe that the bills before your committees, HR 4102 and S 2153, to settle the Salt River Pima-Maricopa Indian Community's water rights claims deserve your full support and the support of Congress and the administration. We believe the problems which this agreement resolves are serious problems, both for Arizona and for the federal government. Finally, the Cities believe this agreement represents a fair settlement of these disputes, one which places the major costs on the beneficiaries in Arizona but with a substantial and fair contribution by the federal government as well.

The Cities greatly appreciate your consideration of these bills and the opportunity to present their testimony to you.

CITY OF GLENDALE, ARIZONA

TESTIMONY

TO THE JOINT HEARING OF THE

SENATE WATER AND ENERGY COMMITTEE
and the
HOUSE OF REPRESENTATIVES INTERIOR
AND INSULAR AFFAIRS COMMITTEE

in support of

H.R. 4102 and S. 2153

TO PROVIDE FOR THE SETTLEMENT OF

THE WATER RIGHTS CLAIMS OF THE
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

IN MARICOPA COUNTY, ARIZONA

March 24, 1988

SUBMITTED BY COUNCILMAN JOE FALBO
ON BEHALF OF MAYOR GEORGE R. RENNER AND
THE CITIZENS OF GLENDALE

81

TESTIMONY

THE CITY OF GLENDALE, ARIZONA, AS A SIGNATOR TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY SETTLEMENT AGREEMENT STRONGLY ADVOCATES PASSAGE OF H.R. 4102 AND S. 2153. THIS IS THE FIRST TIME IN OUR CITY'S HISTORY THAT WE HAVE BEEN PARTY TO AN INDIAN CLAIMS SETTLEMENT ACTION, AND ON BEHALF OF GLENDALE, I WOULD LIKE TO EXTEND OUR APPRECIATION TO ALL THOSE WHOSE DEDICATED EFFORTS MADE THE AGREEMENT POSSIBLE.

THIS SETTLEMENT REPRESENTS ANOTHER COOPERATIVE, POSITIVE STEP THAT WILL PROVIDE THE KIND OF CERTAINTY NECESSARY FOR US TO CONTINUE TO PURSUE RESOLUTION OF LONG-TERM WATER RESOURCE DEVELOPMENT PROBLEMS IN THE VALLEY. GLENDALE, AS A LARGE MUNICIPAL PROVIDER WILL SEE ITS WATER DEMAND DOUBLE BY THE YEAR 2000; AND, AT THE SAME TIME, THE CITY IS EXPECTING TO CONTINUE ITS REDUCTION OF GROUNDWATER PUMPING WITHIN THE PHOENIX ACTIVE MANAGEMENT AREA IN ORDER TO MEET THE "SAFE YIELD" GOAL OF THE ARIZONA GROUNDWATER MANAGEMENT ACT OF 1980. PROVIDERS WILL FACE THIS CHALLENGE OF MEETING INCREASED SERVICE DEMAND WHILE HAVING TO FIND ALTERNATIVES TO THE GROUNDWATER SUPPLY WE HAVE RELIED ON FOR DECADES.

THIS JOINT COMMITTEE NOW HAS BEFORE IT, FOR CONSIDERATION, THE ENABLING LEGISLATION THAT WILL FORMALIZE FEDERAL PARTICIPATION IN A PARTNERSHIP THAT BENEFITS THE INDIAN COMMUNITY AND THE MANY WATER USERS THROUGHOUT THE SALT RIVER VALLEY.

WATER IS ARIZONA'S MOST PRECIOUS COMMODITY. AS A FINITE RESOURCE SHARED BY A MULTITUDE OF VARIED INTERESTS, IT IS OF CRITICAL IMPORTANCE THAT IT BE PRUDENTLY USED AND ALLOCATED.

Page 2

THIS SETTLEMENT AGREEMENT IS A PRODUCT OF NEGOTIATION, RATHER THAN LITIGATION, SOMETHING THAT BOTH CONGRESS AND THE ADMINISTRATION HAS PROMOTED. IT SERVES AS A MODEL FOR THE FUTURE RESOLUTION OF DISPUTED WATER CLAIMS, AND THE CITY OF GLENDALE WOULD RESPECTFULLY REQUEST THAT THIS COMMITTEE SUPPORT PASSAGE OF THE ENABLING LEGISLATION.

I WANT TO THANK THE COMMITTEE MEMBERS FOR THE OPPORTUNITY TO BE HEARD.

83

JOHN LASSEN, PRESIDENT
SALT RIVER PROJECT
STATEMENT IN SUPPORT OF S. 2153 & H.R. 4102
U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
U.S. HOUSE INTERIOR & INSULAR AFFAIRS COMMITTEE
MARCH 24, 1988

Mr. Chairman. My name is John Lassen. I am the president of the Salt River Project, the nation's oldest and, some would say, most successful multi-purpose reclamation project.

The Salt River Project is composed of the Salt River Valley Water Users Association and the Salt River Project Agricultural Improvement and Power District. Together the Association, a private water delivery organization, and the District, a political subdivision of the State of Arizona, provide water and power to some 250,000 acres and about a half million customers in the Phoenix metropolitan area.

As an agent of the federal government, the Salt River Project operates six dams on the Salt and Verde rivers northeast of Phoenix. These structures impound the runoff from a 13,000-square mile watershed to provide the surface water supplies for agricultural, residential, recreational, municipal and industrial use in Central Arizona.

In addition, the Salt River Project operates some 250 deep well pumps to make up shortages in surface water supplies when necessary.

The Salt River Project was organized 85 years ago by landowners in the then dusty village of Phoenix to contract with the federal government for the building of Theodore Roosevelt Dam, located some 80 miles northeast at the confluence of the Salt River and Tonto Creek. Subsequently, five other dams were built and operated by the Project, three on the Salt and two on the Verde River.

In return for pledging their land as collateral for the federal loan to construct the dam, landowners received the right to purchase the water stored behind the dam. Today, most of those lands have changed from agriculture to urban use. By the turn of the century, just about all of the Project lands will be urbanized.

In pertinent point, however, the formation of the Salt River Project resulted in a court decision which played an important role in the development of the Phoenix metropolitan area and in the settlement that brings us before you today.

In 1905 in connection with the formation of the Water Users' Association, a lawsuit, Patrick T. Hurley v. Charles F. Abbott et al, was filed in United States District Court to determine the priority and ownership of water rights in the Salt River Valley. The decision rendered by Judge Edward Kent in 1910 allocated those water rights and provided for their orderly administration.

Today, Central Arizona and the Salt River Valley is the site of the nation's ninth largest city and some of the fastest growing suburbs in the country.

It is also home to the Salt River Pima-Maricopa Indian Community, established by the federal government on June 14, 1879. The Community currently consists of some 53,000 acres and is situated east and north of the Phoenix metropolitan area, or immediately east of Scottsdale and north of Mesa, Arizona.

The Salt River Pima-Maricopa Indian Community, however, has not shared in the material success of the Valley, in large measure because of the failure of the federal government to assure that the Kent Decree water rights could be utilized fully. Moreover, in 1914 the United States chose not to extend membership in the Salt River Project to the Salt River Pima-Maricopa Indian Community.

One specific consequence of the U. S. decision to exclude Community lands from the Project was that they would not share in the water stored in the Salt River Project reservoir system until Bartlett Dam on the Verde was constructed in 1935.

Agro-economic studies suggest that the Community has not been provided with sufficient water to develop its reservation.

We are here today to join with representatives of the Community, Central Arizona municipalities and the State of Arizona to ask Congress to do its part in righting this wrong.

The federal government, through its trust responsibility, was obliged to provide the Indian Community with a dependable water supply and an adequate delivery system. It did not. Today, the water to which the Community may have had a right has been put to use by others.

In 1982 and 1983, the Community filed several lawsuits against the Salt River Project, the cities of Phoenix, Scottsdale, Tempe, Mesa, Chandler, Glendale and Gilbert, the Roosevelt Conservation District and the Roosevelt Irrigation District.

Should the claims of the Community be validated in court, the assured water supply of the one and one half million non-Indian residents in Central Arizona would be enshrouded in uncertainty. Fortunately, all parties have negotiated a solution. As in any compromise, all parties gave up something. But ultimately, the interests of all were met.

In the case of the Salt River Project, we believe we are part of an agreement which will satisfy the water needs of the Salt

River Pima-Maricopa Indian Community, pave the way for other Indian water rights settlements in Central Arizona, and yet meet the obligations we have to the agricultural, residential, municipal and industrial water users within our boundaries.

In addition, this settlement will meet a goal agreed to two years ago when many of us in this room came together with the Congress and the Department of Interior to approve an historic local costsharing agreement for the construction of the Plan 6 elements of the Central Arizona Project (CAP).

The committee may recall, Plan 6 is the water storage and flood control element of the CAP. Although one element of Plan 6, Cliff Dam on the Verde River, was eliminated in 1987 due to various pressures, the original costsharing agreement was accepted by Secretary of Interior Don Hodel with the understanding that Arizona interests would attempt to negotiate a settlement of the Salt River Pima-Maricopa Indian water claims.

Mr. Chairman, I am pleased to report that the goal of settlement has been met and the resultant agreement accepted by all litigants.

Specifically, the settlement will transfer rights to approximately 32,000 acre feet of surface water to the Indian Community and restructure long-standing water use arrangements.

Mr. Chairman, there is a significant cost associated with the agreement: At least $117 million in water and cash will be contributed by local participants with $77 million required from the United States.

As we understand the agreement, and request that Congress codify it through S. 2152 and H.R. 4102, the settlement would:

First. Authorize and direct the United States to provide the Indian Community with 7,000 acre feet of new storage space behind Roosevelt Dam, which is to be modified as part of Plan 6 and the Bureau of Reclamation Safety of Dams program. This will allow the community to use its full Kent Decree entitlement of 18,776 acre feet annually.

Second. Resolve a long-standing dispute between the Salt River Project and the Community over the operation of Bartlett Dam. Under the settlement, the Community will be entitled to more water in times of surplus.

Third. Entitle the Community to receive annually approximately 9,000 acre feet of water stored at the dams operated by the Salt River Project on the Salt and Verde rivers.

Fourth. Restore the portion of surface water supplies withdrawn for the Community from the Valley cities and direct the United States to obtain rights to 22,000 acre feet of water from

Arizona's share of the Colorado River. Also, to contract to deliver the water to the cities of Chandler, Glendale, Scottsdale, Tempe, Mesa and Phoenix and the Town of Gilbert.

Fifth. Amend the contract between the Community and the United States for delivery of as much as 13,300 acre feet per year of Central Arizona Project water. That contract, dated December 11, 1980, would be extended to December 31, 2098 and authorize the Community to lease and deliver CAP water to the City of Phoenix.

Sixth. Establish a trust fund to provide the Community a long-term revenue source to finance water resource development projects and other economic and community development projects.

Seventh. Authorize and direct the Secretary of the Interior to enter into contracts with the Community to rehabilitate and improve the Community's existing water delivery facilities, for the design and construction of new water delivery facilities and for the leveling of irrigable lands to be served by the facilities.

Eighth. Allow the Community to execute a waiver and release all present and future claims of water rights and remove all claims by the Community allottees while preserving their ability to recover damages from the claims.

Mr. Chairman, we believe this last accomplishment shows, in particular, the new era of compromise and cooperation represented by this agreement.

Congressional ratification of the settlement and approval for participation by the United States will insure that all water users of the Salt River Valley have an assured supply in the future, and that they will live with their neighbors in harmony and prosperity.

Mr. Chairman, I would respectfully suggest that on page 5 at line 16 in section 3 (g) the Kent Decree date be corrected to March 1, 1910 and on page 21 at line 19 in section 11 (b) the spelling of Gila be corrected.

Thank you for the opportunity to present these views.

TESTIMONY OF
MARK DOBSON, PRESIDENT,
ROOSEVELT WATER CONSERVATION DISTRICT
to the
Joint Hearing of the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and the
HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
in support of
H.R. 4102
and S 2153
TO PROVIDE FOR THE SETTLEMENT OF
THE WATER RIGHTS CLAIMS OF THE
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
IN MARICOPA COUNTY, ARIZONA

MARCH 24, 1988
WASHINGTON, D.C.

031988
MJB42U

Chairman Udall, Chairman Inouye, Honorable Committee Members:

My name is Mark Dobson. I am President of the Roosevelt Water Conservation District, also known as the "RWCD," and a member of its Board of Directors. I was first elected a director of the RWCD in 1983 and am now serving my second term as its President.

The landowners of the RWCD are grateful for this opportunity to testify in favor of the legislation before you, which will authorize and approve the Salt River Pima-Maricopa Indian Community Water Rights Settlement. This legislation will settle litigation in which RWCD, hundreds of other residents of the Phoenix metropolitan area, and the Salt River Pima-Maricopa Community have been engaged for many years. The Settlement will bring a modicum of certainty to the water circumstances of RWCD landowners, thus permitting them to plan for the future. It will also render to our Indian neighbors water which will enable them to farm and to prosper.

RWCD's area encompasses approximately 40,000 acres. The planning areas of the Cities of Mesa and Chandler, and of the Town of Gilbert, extend into and cover the greater part of RWCD's area. RWCD receives approximately 40,000 acre-feet per year of water from the Salt and Verde Rivers, exclusive of floodwater. It also pumps groundwater and has an agricultural water service subcontract from the Central Arizona Project.

The background leading up to RWCD's participation in this Settlement is as follows: RWCD was established in 1920 under the name of the Auxiliary Eastern Canal Landowners' Association. That Association appropriated water from the Salt and Verde Rivers to irrigate approximately 40,000 acres of farmland adjacent to and directly east of the Eastern Canal of the Salt River Project. The source of the appropriated water was, and is, the Salt and Verde Rivers, but the water is produced by the RWCD's lining of approximately 28 miles of canals owned by the Salt River Project pursuant to an agreement RWCD entered into with the Salt River Valley Water Users' Association on or about October 4, 1924. That Agreement obligated RWCD to line certain canals, in return for which RWCD would be entitled to the water saved by the lining of the canals. The amount of water saved was to be calculated as a formula, which, over time, came to be expressed as a percentage of all water diverted at Granite Reef Diversion Dam on the Salt River for the benefit of certain lands within the Salt River Project. The 1924 Agreement was approved by the Secretary of the Interior on or about December 2, 1924, in accordance with Section 2 of the Act of February 21, 1911, also known as the Warren Act. Historically, under this Agreement and the RWCD appropriation of water, approximately 40,000 acre-feet of water per year, exclusive of flood water which RWCD uses whenever it is available, have been diverted and put to beneficial use in RWCD's area.

Over the years, the Agreement has been the subject of some controversy. For example, claims have been asserted that RWCD's entitlement to water as expressed in the 1924 Agreement was to be measured as a percentage of only irrigation water diversions at Granite Reef Dam, and not of all of the diversions made for the benefit of certain lands within the Salt River Project. Claims were also asserted by the Salt River Pima-Maricopa Indian Community that the 1924 Agreement was invalid because the Secretary had only approved the 1924 Agreement but was not a party to it; and that the 1924 Agreement permitted the use of water outside of the Salt River Project in violation of the Warren Act.

In order to settle these controversies and claims, as well as the litigation which attends them, RWCD has become a participant in the Settlement. Under the Settlement, RWCD will cause to be delivered to the Salt River Pima-Maricopa Community up to 8,000 acre-feet of water per year from RWCD's entitlement to waters of the Salt and Verde Rivers. This amount of water equals approximately 20% of RWCD's entire supply of water from the Salt and Verde Rivers, exclusive of floodwater. RWCD will continue to bear all of the expense of lining and maintaining the approximately 28 miles of canal which produces this water. RWCD will do so at its sole expense, and not at the expense of the federal government or of the Indian Community.

In return for these contributions, the Settlement Agreement and the authorizing legislation will place RWCD in a position to be able to honor the obligations to deliver water which the Settlement creates. The Settlement and the legislation confirm the legality and validity of RWCD's 1924 Agreement and extend its terms; they confirm the manner in which RWCD's entitlement to water under the 1924 Agreement is calculated. In this way, RWCD and the Cities of Mesa and Chandler, and the Town of Gilbert, which one day will succeed to the interests of RWCD's landowners, will be able to deliver to the Community up to 8,000 acre-feet of water per year from RWCD's entitlement to waters from the Salt and Verde Rivers.

This Settlement could not have happened had it not been for the insistence of the Secretary of the Interior that the Community's water rights claims be settled, and through the assistance of personnel of the Office of the Secretary who urged the parties to focus on their needs, not just their rights, and who developed the hydrological and some of the fiscal structures of the Settlement. For these efforts we are most deeply grateful.

Arriving at this Settlement has been a painful, expensive process. Nevertheless, we believe the pain and expense have been justified by the Settlement now reached, which strikes a fair balance to those participating in it, without adversely affecting or interfering with the interests of other water users in Arizona, both Indian and non-Indian, who are not parties to the Settlement.

We urge you to enact the legislation before you.

Thank you for this opportunity to testify.

I have brought with me our District's manager and attorney to answer any technical questions you may have.

PREPARED STATEMENT OF BRUCE W. HEIDEN, DIRECTOR, ROOSEVELT IRRIGATION DISTRICT

The purpose of the Salt River Pima Maricopa Water Settlement Agreement is "to settle once and for always the water rights of the SRPMIC." The Roosevelt Irrigation District ["RID"] supports the Settlement and requests your Approval of HR 4102 and S 2153. We appreciate this opportunity to identify RID, summarize our history and recap our involvement in and expectations of the Settlement.

THE RID AND OUR WATER SUPPLY.

The RID is an Arizona Irrigation District of just over 38,000 acres. Since 1923, RID has served over 150 farmers on nearly 35,000 net irrigable acres located, generally, in the South-Central portion of Maricopa County and over 25 miles west of the SRPMIC Reservation.

A map of the RID is attached as Exhibit "A" hereto. A map of the Phoenix Metropolitan area, showing the locations of the RID, the SRPMIC Reservation and various cities and other entities is attached as Exhibit "B" hereto.

RID's water supply is derived from wells located in South-Central Maricopa County. Except for occasional spill water, RID does not receive surface water deliveries from the Salt, Verde or any other River. Approximately one-half of our wells are located within the boundaries of RID. Pursuant to a 67 year old contract, the balance are located within the Salt River Project ["SRP"].

The quality and quantity of water RID derives from our wells within the SRP is superior to wells within the RID. RID's right to continue providing water to our farmers with water from the RID wells located within the SRP has been challenged by the SRPMIC. The uninterrupted performance of RID's wells within SRP is necessary for the continued existence of RID, RID's 150 farmers and those dependent upon our successful farming economy.

RID'S 1921 CONTRACT.

The Contract providing for RID's wells within the SRP was executed in 1921 between the Salt River Valley Water Users' Association ["SRP"] and the Carrick and Mangham Agua Fria Land and Irrigation Company ["Carrick and Mangham Contract"]. Sixty-five years ago, in 1923, the RID was formed and all of the provisions of the Carrick and Mangham Contract were assigned to RID. The agreement between SRP and RID was amended in 1927 and again in 1950. The Carrick and Mangham Contract and the RID Amendments were all approved by the Secretary of the Interior.

The Carrick and Mangham Contract explains that a large area of land within the SRP had become saturated with water. It had become desirable and in the best interests of the SRP and the settlers and landowners within SRP to have those lands "drained and unwatered." In close proximity to the SRP lands were approximately 35,000 acres which were without irrigation.

The Carrick and Mangham Contract proposed that those approximate 35,000 acres be formed into an irrigation district (i.e. The RID) which would pump water from within the SRP and irrigate the 35,000 acres. The Carrick and Mangham Contract further provides "in order to assure the payment of said [irrigation district] bonds and the irrigation of said lands within said irrigation...district, it is necessary that [the Carrick and Mangham Agua Fria Lands and Irrigation Company] and [the to be formed Roosevelt Irrigation District] be assured of an adequate supply of water." Thus the 1921 Contract was entered to assure an adequate supply of water and thus the RID, in reliance on the Contract and the Secretary of the Interior's approval of the Contract, was created.

RELIANCE ON THE 1921 CONTRACT.

For 65 years the RID and farmers within our district have relied on the 1921 Contract and the adequate supply of water it assures. RID has borrowed and otherwise obligated millions of dollars to form, develop, improve, operate and maintain our District. Our farmers have borrowed and otherwise obligated millions of dollars to obtain, improve, operate and maintain their farms and irrigation systems. Those investments and obligations were encouraged and made in reliance on the Contract and the expectation of continuing to derive an adequate supply of water as assured by the Contract.

RID's offices are located in Buckeye, Arizona. Buckeye, as are many other communities in the area, is an agricultural community heavily dependent upon the economics of surrounding farmland. Tampering with the adequate supply of water assured by the Contract would ruin not only RID and our farmers, but also businesses in Buckeye and similar agricultural communities. The social and cultural impacts would be equally devastating.

SRPMIC v. USA, et al.

RID's 67 year old Contract and right to continue providing our farmers with water from the RID wells located within the SRP area has been challenged by the SRPMIC in SRPMIC v. USA, et al., CIV 82-745 PHX RGS. RID strongly controverts the basis and timeliness of SRPMIC's claim and we consider our position factually, legally and practically defensible. However, we would rather be using our energies and resources providing water to our farmers than defending protracted litigation.

RID's INVITATION TO SETTLE.

Nearly two years ago, RID was approached by SRPMIC and Interior Department representatives and invited to consider participation in the proposed Salt River Pima-Maricopa Water Settlement Agreement. The need for Valley-wide cooperation and water rights stabilization was stressed. The Department encouraged RID's involvement as a source of water through an exchange involving the SRPMIC.

With the Department's encouragement and with the hope our participation would help make the Settlement a reality and help stabilize the future of those dependent upon water rights, we agreed to participate in the discussions. After nearly two years and innumerable negotiating and drafting sessions, the Parties reached and signed the SRPMIC Water Rights Settlement Agreement.

THE RID EXCHANGE AND WATER TRANSFER.

The RID is geographically far removed and "downstream" from the SRPMIC Reservation. There is no practical way to transport water from RID's wells to the Reservation. An exchange and water transfer is the only practical way to use RID as a means of increasing the amount of water available on the Reservation.

Paragraph 11 and Exhibit 3K of the Salt River Pima-Maricopa Water Settlement Agreement are the provisions most directly applicable to RID. Through an exchange and water transfer among SRPMIC, RID, Phoenix and SRP the SRPMIC will receive up to 10,010 acre feet, over 8% of SRPMIC's annual water budget, per year. For that to occur, Phoenix will deliver up to 30,030 acre feet of treated effluent per year to RID and RID will deliver up to 33,000 acre feet of well water per year to SRP. The exchange remains dependent upon receipt of various permits and expenditure by RID and Phoenix of considerable capital, operating and maintenance expense.

In addition to the contribution and the expense of contributing up to 10,010 acre feet of water per year to the SRPMIC, RID's acceptance and reuse of treated effluent is an important water conservation measure which we believe should be encouraged and considered.

SETTLEMENT APPROVAL AND IMPLEMENTATION.

RID must continue serving the water needs of our farmers and, together with them, requests Congressional reassurance of our water supply and our ability to continue serving water. To that end, we ask the Settlement be approved and our Contract and Amendments thereby be reconfirmed, that necessary funds be appropriated, and that litigation be terminated through the signing and entry of all necessary Releases and Dismissals. In addition, we request all available assistance in processing and considering permits needed to implement the SRPMIC-RID-Phoenix-SRP exchange and water transfer.

CONCLUSION.

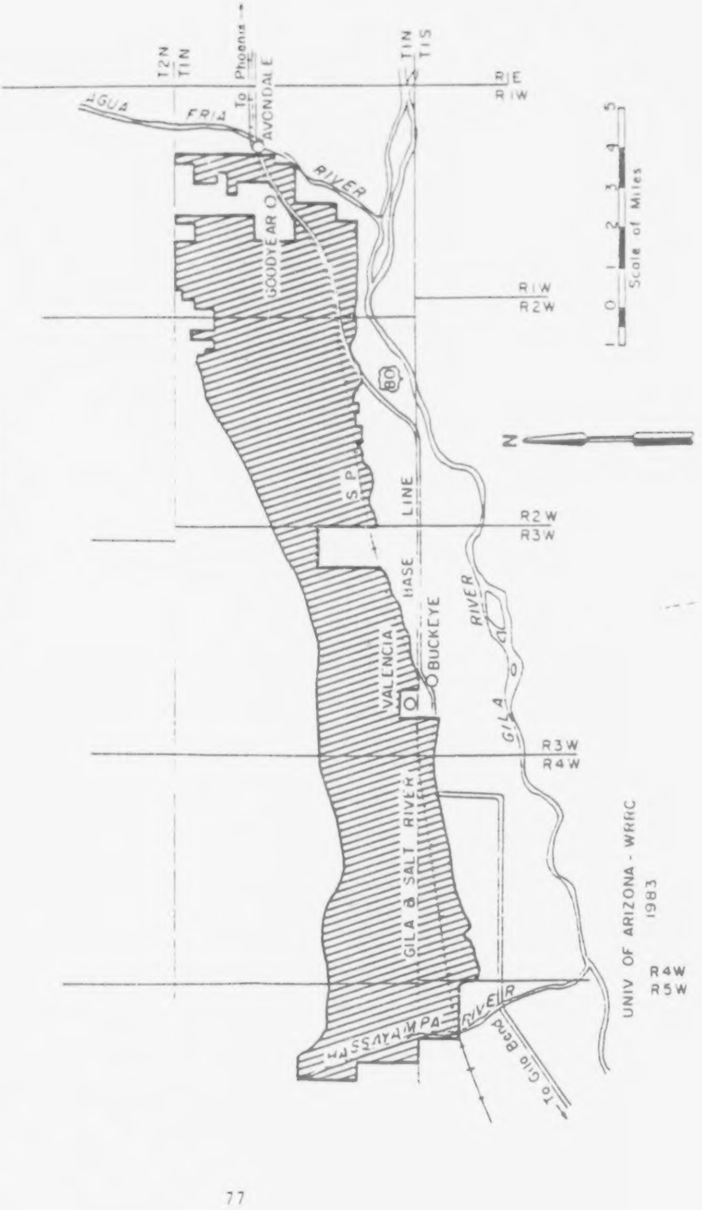
RID agrees it is best "to settle once and for always the water rights of the SRPMIC." This Settlement is intended to do that. We believe the SRPMIC and all others who are directly, indirectly, economically and culturally dependent upon water in the Valley will be the ultimate beneficiaries.

We appreciate the opportunity to comment and to request your Approval.

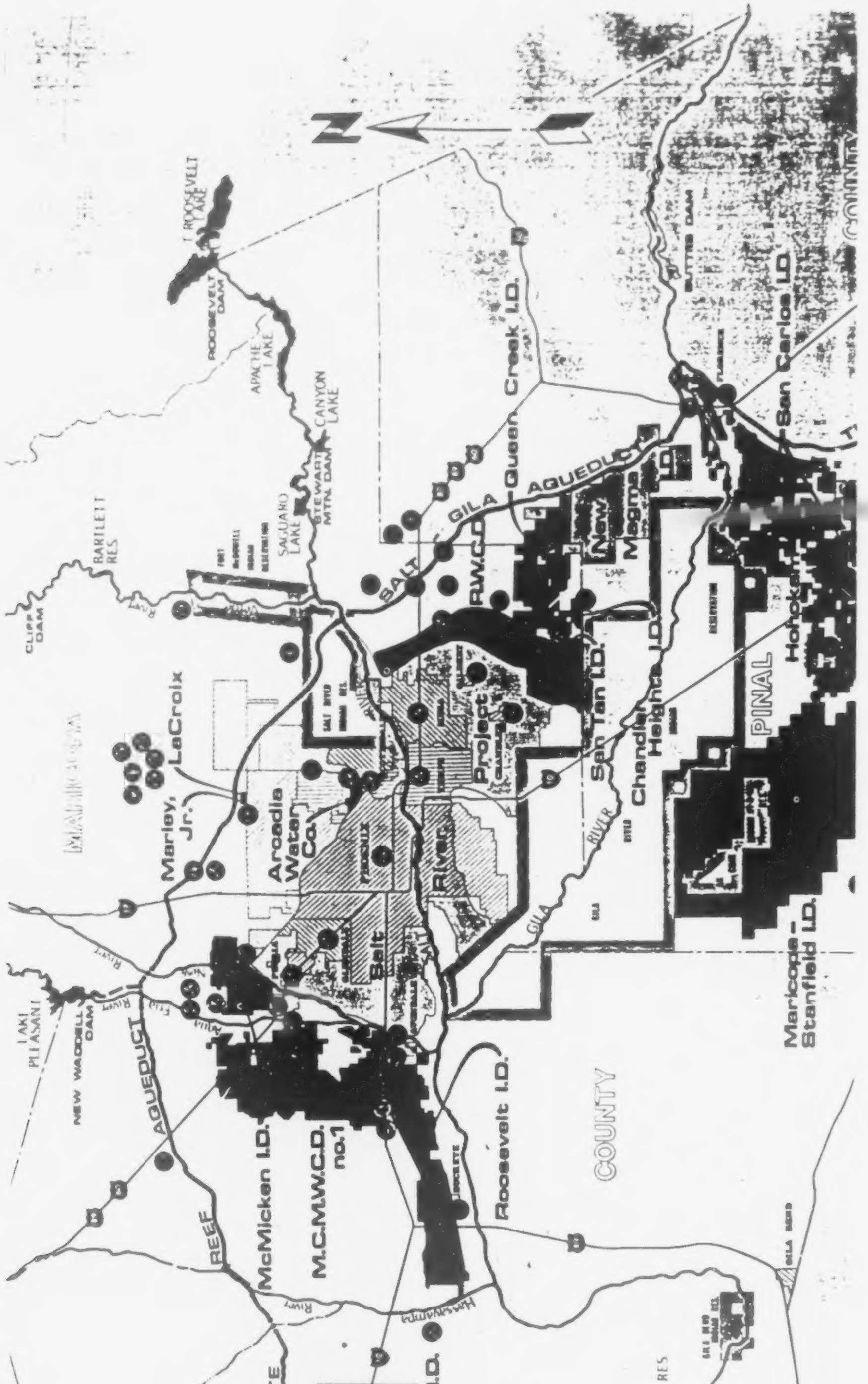
THE ROOSEVELT IRRIGATION DISTRICT

Charles Youngker-President
W. Bruce Heiden-Board Member
Stanley Smith- Board Member
Post Office Box 95
103 West Baseline
Buckeye, Arizona 85326

ROOSEVELT IRRIGATION DISTRICT
MARICOPA COUNTY


T2N
T1N
To Phoenix
AGUA FRIA RIVER
AVONDALE
GOODYEAR
T1N
T1S
R1E
R1W
R1W
R2W
80
S.P.
BASE LINE
R2W
R3W
VALENCIA
BUCKEYE
GILA RIVER
R3W
R4W
GILA & SALT RIVER
R4W
R5W
HASSAYAMPA RIVER
To Gila Bend
N
0 1 2 3 4 5
Scale of Miles

UNIV OF ARIZONA - WRRC
1983


ROOSEVELT LAKE
ROOSEVELT DAM
APACHE LAKE
CANYON LAKE
STEWART MTN. DAM
SAGUARO LAKE
BARTLETT RES
CLIFF DAM
LAKE PLEASANT
NEW WADDELL DAM
MARICOPA
LaCroix
Marley, Jr.
Arcadia Water Co.
Salt River Project
R.W.C.D.
Queen Creek I.D.
SALT - GILA AQUEDUCT
New Magma
San Tan I.D.
Chandler Heights I.D.
San Carlos I.D.
BUTTES DAM
GILA RIVER
PINAL
Hohokam
Maricopa - Stanfield I.D.
COUNTY
Roosevelt I.D.
M.C.M.W.C.D. no.1
McMicken I.D.
REEF
AQUEDUCT
NITE
h I.D.
OCK RES

PREPARED STATEMENT OF THOMAS C. CLARK, GENERAL MANAGER, CENTRAL ARIZONA WATER CONSERVATION DISTRICT

The Central Arizona Water Conservation District ("CAWCD" or the "District") supports the proposed settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community. The CAWCD is the agency designated by Arizona law to repay Arizona's share of the costs of construction of the Central Arizona Project ("CAP") and operate and maintain the CAP. As a consequence, it has a vital interest in any matter affecting the CAP and its water users.

The proposed settlement calls for the use of CAP facilities to facilitate the settlement agreement. As originally proposed to the Central Arizona Water Conservation District, the proposed settlement contained certain elements which caused the District and its Board of Directors concern. The District's Board of Directors consists of 15 members elected by the constituents of Maricopa, Pinal, and Pima Counties, Arizona, the three counties comprising CAWCD. The District's concerns were first expressed and discussed publicly before members of the Board on February 18, 1988. At that time, our concerns focused on essentially three aspects of the settlement proposal: (1) the importation of 22,000 acre-feet of pre-CAP Colorado River water for delivery to the Central Arizona cities participating in the settlement, (2) a 3,000 acre-foot difference between the amount of water to be delivered to such cities and the 22,000 acre-feet of water to be obtained from the Colorado River, and (3) the impact of losses resulting from evaporation and seepage on the 22,000 acre-feet of water to be imported for the cities. As a consequence of these concerns, members of our staff were instructed to engage in discussions which were designed to reach a compromise which would permit the CAWCD to support the settlement and participate in it as a party. Those discussions, we are pleased to say, have been successful, and resulted in an Agreement in Principle dated March 3, 1988, which will require the revision of the settlement documents in certain respects. A copy of this Agreement in Principle is attached to this testimony as Exhibit A. While the Agreement in Principle has not yet been fully reduced to changes to the settlement documents, the parties are actively engaged in an effort to do just that. We have every reason to believe that this effort will be successful.

As part of the CAWCD's consideration of the settlement proposal before you, the Board of Directors of the District adopted a Statement of Policies and Principles regarding the use of Central Arizona Project facilities to facilitate Indian water rights settlements. This Statement of Policies and Principles has received broad public support in Arizona. A copy of the Statement of Policies and Principles is attached as Exhibit B. The Board of Directors of the CAWCD has measured the proposed settlement against this Statement of Policies and Principles, and concluded that the settlement proposal is substantially consistent with it.

Necessarily, the settlement documents will require some further revision to incorporate the Agreement in Principle attached as Exhibit A. In anticipation that such revisions will be made, the Board of Directors of the District has approved the settlement proposal and the District's participation as a party.

The legislation before you was prepared prior to the compromises contained in the Agreement in Principle reached between the Central Arizona Water Conservation District and the other parties to the settlement agreement. Accordingly, it too may require some revision in order to incorporate those recent compromises. Nonetheless, the District appears before you in support of the legislation. The settlement proposal represents an historic effort by local water interests to compromise and permanently resolve this potentially substantial Indian water rights claim. To the extent that the facilities of the Central Arizona Project are involved in that settlement, the Board of Directors of the CAWCD has satisfied itself that the settlement adequately addresses the interests of the CAWCD, its water users, and taxpayers.

During the course of the discussions necessary to enable the CAWCD to support the settlement proposal, several important matters were established.

First, the District established the principle that Indian water rights settlements which rely upon Central Arizona Project facilities should have no adverse impact on CAP water supplies or CAP water users. As part of the instant settlement, the parties have agreed that any additional water supplies to be furnished to the participating cities over and above those imported from the Colorado River shall first be made available from one of the parties to the settlement itself, the Roosevelt Water Conservation District ("RWCD").

Second, the compromise establishes that all supplemental water supplies obtained to facilitate this settlement shall share evaporation and seepage losses pro rata with all other supplies delivered through CAP facilities.

Third, certain accommodations have been made regarding the use of CAP facilities to deliver supplemental water supplies which are designed to alleviate the potential adverse impact of such action on the capacity of the CAP delivery facilities.

Fourth, all operation, maintenance, and replacement costs associated with the delivery of the additional water supplies to be made available to the cities participating in the settlement are to be borne by such cities. This is vital if the CAWCD and its water users are to be held whole as to such costs.

Fifth, under the settlement agreement, CAWCD has no repayment obligation for the capital costs associated with delivery of the water supplies provided for in this settlement.

This includes the delivery of the additional water supplies to be obtained from the Colorado River, the delivery of certain CAP agricultural water supplies to the cities participating in the agreement, and the delivery of the water supplies to be made available to the City of Phoenix as a result of the lease by the Indian Community of its Central Arizona Project water supplies to that city. Since CAWCD is to receive no water service capital charges from the cities in respect to deliveries of any of the above water supplies, it is critical that CAWCD have no repayment obligation as to the capital costs associated with the delivery of such supplies. The provisions of Sections 7(b)(2) and 8(d)(2) of HR 4102 and S 2153 are intended to achieve this result.

Finally, the proposed settlement was reached only through the arduous efforts of all parties to reach a compromise on all significant issues. From this arose a principle of paramount importance to the Central Arizona Water Conservation District. It is that, whenever the facilities of the Central Arizona Project are to be used to facilitate such a settlement, the Central Arizona Water Conservation District and its water users must be consulted and be actively involved in the settlement negotiations. We are pleased to say that that has occurred.

The above principles are intended to protect the prior interests of existing Central Arizona Project water users and taxpayers. We believe that the settlement agreement is faithful to them. This does not mean that there are not minor problems which still have to be resolved. As we noted above, recent compromises reflected in the Agreement in Principle dated March 3, 1988, must still be incorporated into the relevant provisions of the settlement documents and the legislation before you. Additional clarification of that legislation may also be necessary. In particular, the District has expressed concern to the other settlement participants regarding Section 9(a) of the bills. However, the District has been assured that necessary revisions to both the settlement documents and the bills will be made in order to resolve these concerns.

It is against this background that we are pleased to report to you that the Board of Directors of the Central Arizona Water Conservation District has approved the proposed settlement, subject to the documents being revised to reflect the Agreement in Principle and related concerns. We fully anticipate that the parties will be successful in resolving all of our remaining concerns, and indeed this effort is well underway. There is every reason to believe that this effort will be successful. Accordingly, we fully anticipate that in the very near future we shall be able to take a final package of settlement documents to our Board for approval and signature by the authorized officers of the District.

DISCUSSION

The Central Arizona Water Conservation District supports the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community. The District's involvement as a participant in the settlement stems from its responsibilities as the entity charged by Arizona law with the responsibility for repaying Arizona's allocable share for the construction costs of the Central Arizona Project and its role under Arizona law as the agency responsible for operating and maintaining the Project. The facilities of the Central Arizona Project play a key role in the proposed settlement of the Indian Community's claims. Because of this, the Central Arizona Water Conservation District is vitally interested in the impact of the settlement on the District and its water users.

The District is governed by a 15 member board of directors elected by the District's constituents from Maricopa, Pinal, and Pima Counties in Arizona--the three counties to be served by the Central Arizona Project. When the Board of Directors was first asked by the other settlement participants to approve the proposed settlement, the District's staff expressed concern about the settlement and its potential impact on the District's water users. Because of this, the District's Board appointed a special committee to review the settlement and to consider a proposed Statement of Policies and Principles governing the use of Central

Arizona Project facilities to facilitate Indian water rights settlements. Subsequently, an extensive report was made to the Board by the District's staff, and substantial public discussion occurred, concerning the proposed Statement of Policies and Principles for the use of CAP facilities to facilitate Indian water rights settlements and the proposed settlement itself.

These discussions focused principally on three areas of concern: (a) the proposed use of pre-CAP Colorado River water supplies to be obtained from the Wellton-Mohawk Irrigation and Drainage District for delivery to the cities participating in the settlement, (b) the proposal to obtain 22,000 acre-feet of such water from the Colorado River, but to deliver 25,000 acre-feet of water to the such cities through CAP facilities, and (c) the impact of system losses on the delivery of the 22,000 acre-feet to be obtained for the cities from pre-CAP Colorado River supplies. Also considered were the potential impacts of the settlement proposal on the delivery capacity of the CAP works, the use of power resources dedicated to the Central Arizona Project for the purposes of delivering the additional water to be acquired for the cities under the settlement, and the potential impact of the settlement proposal and the then proposed enabling legislation on the Central Arizona Water Conservation District's repayment obligation for the Central Arizona Project.

1. The Supplemental Water Supplies to be Obtained from the Colorado River.

The settlement agreement provides that the cities participating in the settlement shall relinquish to the Indian Community 20,000 acre-feet of Salt and Verde River water supplies to which the cities would otherwise be entitled. In return, the settlement agreement provides that the United States shall obtain for delivery to the cities 22,000 acre-feet of pre-CAP Colorado River water. Under the terms of the agreement, such water must not have been included in the water supplies determined to be available for the Central Arizona Project and its water users. The settlement proposal does not state where such water supplies are to be obtained. However, as a practical matter, the parties have focused on Wellton-Mohawk Irrigation and Drainage District as a potential source of this water supply.

A resolution of the Board of Directors of Wellton-Mohawk Irrigation and Drainage District, adopted on December 22, 1987, sets forth the conditions under which the Wellton-Mohawk Irrigation and Drainage District would be willing to participate in the proposed settlement, and provides in part that Wellton-Mohawk's contract entitlement to Colorado River water shall be reduced by the 22,000 acre-feet required for this settlement. That resolution further stipulates that 2,000 acres of land within the Wellton-Mohawk District shall be obtained from willing sellers, purchased, and retired.

Estimates indicate that the retirement of 2,000 acres of land within the Wellton-Mohawk District would produce a reduction in consumptive use of Colorado River water supplies of approximately 10,000 acre-feet per year. It is reasonable to assume that in some years all or part of this 2,000 acres might not have been farmed. Thus, during normal and surplus years on the Colorado River, it might be questioned whether the water supplies which would be provided from the Wellton-Mohawk Irrigation and Drainage District would truly supplement Central Arizona Project water supplies to the full extent of 22,000 acre-feet, or whether such supplies are already to some extent a part of the Central Arizona Project water supplies to which Central Arizona Project agricultural water users would be entitled. However, under shortage conditions, a reduction in Wellton-Mohawk's contract entitlement of 22,000 acre-feet per year is critical to providing a full 22,000 acre-feet of additional Colorado River water to the cities participating in the settlement and to other Central Arizona Project municipal and industrial water users.

There was a wide difference of opinion about the use of water supplies from the Wellton-Mohawk District as a source for the 22,000 acre-feet of water to be provided to the cities under this settlement proposal. However, in the interests of facilitating the settlement, the Board of Directors of the Central Arizona Water Conservation District determined to waive objection to this aspect of the settlement proposal subject, however, to a requirement that all future settlements which rely upon the obtainment of Colorado River water supplies to replace or substitute for supplies relinquished to Indian entities must be demonstrated to be real additions to CAP supplies.

2. The Difference Between the Amount of Water to be Obtained from the Colorado River and the Amount of Supplemental Water to be Delivered to the Cities Participating in the Settlement.

The current version of the settlement agreement provides for the acquisition by the United States of 22,000 acre-feet of Colorado River water for the cities participating in the settlement, but provides that 25,000 acre-feet shall be delivered to such cities. The consequences of this 3,000 acre-foot difference have been discussed extensively before the Board of Directors of the Central Arizona Water Conservation District. Our original analysis of this aspect of the agreement indicated that the 3,000 acre-foot difference would have to be taken from Central Arizona Project agricultural water supplies in all normal and surplus water years on the Colorado River. Essentially, under the version of the settlement agreement originally proposed to the Board of Directors on February 4, 1988, this would have been done without the consent or participation of existing CAP agricultural subcontractors. This formed the basis for a recommendation that our approval of the settlement be subject to the condition that the contractual entitlements of the cities to the replacement water supply under the settlement agreement be reduced from 25,000 acre-feet to 22,000 acre-feet.

Representatives of the cities participating in the settlement pointed out that significant benefits were to be gained by all Central Arizona Project municipal and industrial water users as a result of the cities' proposal as to how these replacement water supplies are to be distributed in times of shortage. Briefly, the participants in the settlement propose that, during times of water supply shortage on the Colorado River, the 22,000 acre-feet of water to be obtained from pre-CAP Colorado River water supplies be distributed to some extent even to those CAP municipal and industrial water users that are not participants in the settlement. This will have the effect of increasing the water supply available to all CAP municipal and industrial water users in shortage years on the Colorado River. In return for this benefit, the participating cities argued that they should be entitled to an additional water supply in normal and surplus water years, and that this additional water supply should come from CAP agricultural users.

Fortunately, during the course of the public comments on this aspect of the settlement proposal, the Roosevelt Water Conservation District ("RWCD") indicated that it would be willing to relinquish 3,000 acre-feet of its own entitlement to Central Arizona Project agricultural water in order to make deliveries of this additional water to the cities participating in the settlement. Accordingly, the Board recommended that District staff pursue a potential compromise of this issue, and extensive discussions were held between February 18, 1988 and March 3, 1988, in an attempt to reach such a compromise. These discussions led to a formula for the contribution by RWCD of a portion of its Central Arizona Project agricultural entitlement to supply the 3,000 acre-foot difference between the amount of water to be obtained for the cities from the Colorado River and the amount of water to be delivered to the cities in normal and surplus water years. While this compromise has not yet been reflected in the settlement documents or the proposed legislation, all participants are actively engaged in making the changes necessary to do so.

3. The Impact of System Losses on the Supplemental Water Supplies to be Imported from the Colorado River.

As CAWCD began to analyze the settlement agreement, it became apparent that the parties to the settlement had not adequately considered the impact of system losses (from evaporation and seepage) on the delivery of the 22,000 acre-feet of Colorado River water to be obtained for the cities participating in the settlement. It was our staff's position that all imported water supplies, including those imported for purposes of facilitating this settlement, should share losses pro rata with all other water supplies to be delivered through Central Arizona Project facilities. The cities participating in the settlement maintained that this would result in a diminution of the additional water supplies to be made available to them from the Colorado River of roughly 1,000 acre-feet per year, and they objected to this result. However, we believe that the principle that imported water supplies should share losses is an important one that must be preserved. As a consequence, the Board recommended that the District's approval of the settlement be subject to the condition that recipients of replacement water supplies share system losses pro rata with all other supplies delivered through CAP facilities. Until recently, the cities would not agree to this result.

On March 3, 1988, the Board of Directors of the Central Arizona Water Conservation District met to consider the proposed Statement of Policies and Principles Regarding the Use of CAP Facilities to Facilitate Indian Water Rights Settlements and the proposed Salt River Pima-Maricopa Indian Community Settlement Agreement once again. The Board adopted the proposed Statement of Policies and Principles attached hereto as Exhibit B. That same day, the participants in the settlement agreement proposed a further compromise which had the effect of eliminating the remaining differences between the Central Arizona Water Conservation District and the other parties regarding system losses. Attached, as Exhibit A to this testimony (entitled "Agreement in Principle--3/3/88"), is the basic formula for this compromise. In essence, the compromise provides for the contribution by RWCD from its CAP agricultural entitlement of an amount of water sufficient to supply, on the average, 3,000 acre-feet of water to the cities participating in the settlement agreement. This is intended to supply the difference between the 22,000 acre-feet of water to be obtained for the cities from the Colorado River and the 25,000 acre-feet to be delivered to the cities under the current version of the settlement agreement. To do this, RWCD has agreed to supply up to 5,000 acre-feet of water to the cities out of its CAP agricultural entitlement when it is able to do so. The reasons for this are that, under the Agreement in Principle attached as Exhibit A hereto, the cities are initially to receive water from the RWCD CAP agricultural entitlement, not from CAP agricultural water supplies otherwise available to the Project as a whole. Like other agricultural users of CAP supplies, RWCD's CAP agricultural entitlement is expressed as a percentage of the total CAP agricultural supply. Thus, in some years, the amount of water available to the cities from RWCD could be less than 3,000 acre-feet. In addition, the cities have now agreed to accept losses on the delivery of the 22,000 acre-feet of water to be obtained from the Colorado River. This will have the effect of reducing deliveries of these additional water supplies by roughly 1,000 acre-feet per year. Therefore, to compensate both for system losses and anticipated reductions in agricultural CAP supplies, a total of 5,000 acre-feet of water will be supplied by RWCD to "firm up" average deliveries of 3,000 acre-feet per year to the cities participating in the settlement.

When RWCD's CAP agricultural entitlement is so reduced as a result of a reduction in RWCD's eligible acreage (through the conversion of agricultural lands to municipal and industrial uses) such that RWCD can supply an amount less than 3,000 acre-feet of water in a normal year to the cities, then the difference between the amount supplied and 3,000 acre-feet will be charged to the Central Arizona Project water supplies otherwise available for agricultural CAP users. However, at that time, RWCD and other urbanized areas, through such conversions, will have "returned" substantial amounts of water to the CAP agricultural supplies available for CAP agricultural users. Therefore, this element of the settlement agreement should have little, if any, significant impact on our CAP agricultural water users.

CONCLUSION

As a result of the compromise reflected in the attached Agreement in Principle, the Board of Directors of the Central Arizona Water Conservation District voted to approve the proposed settlement agreement, and the District's participation as a party to that agreement, subject to the condition that the settlement documents be revised to incorporate the substantive elements of the Agreement in Principle. In doing so, the Board measured the proposed settlement agreement against each of the elements of its Statement of Principles and Policies for Use of CAP Facilities to Facilitate Indian Water Rights Settlements and found the proposed agreement to be substantially consistent with those policies and principles.

First, in light of the compromise reached by the parties on March 3, 1988, the District believes that the potential adverse impact of the settlement on Central Arizona Project agricultural water users has been minimized to the extent of being rendered inconsequential in terms of the operating effects of this agreement. In particular, the 3,000 acre-feet to be delivered to the cities, over and above that which would be obtained for the cities from the Colorado River under the settlement agreement, is now to be made available principally, if not entirely, from the water supplies of a party to the settlement. The manner in which this difference between the Central Arizona Water Conservation District and other participants in the settlement has been compromised further suggests that the major parties to such a settlement agreement must find the means of alleviating or mitigating adverse effects on others, and that these means must be provided out of the parties' own resources. The contingent possibility that up to 3,000 acre-feet of water may have to be provided out of agricultural water supplies otherwise available to Central Arizona Project agricultural users is, in our judgment, remote, and an acceptable compromise for the purposes of facilitating this settlement. Further, in keeping with the Board's policies regarding system losses, the parties to the settlement agreement have now agreed that the 22,000 acre-feet of water to be obtained from the Colorado River for delivery to the cities participating in the agreement shall share losses pro rata with all other supplies delivered through Central Arizona Project facilities.

Second, the Agreement in Principle incorporates a further compromise regarding system capacity which is designed to alleviate potential adverse impacts on existing CAP users brought about by the importation of additional water supplies through CAP facilities. Briefly, it was considered theoretically possible that the importation of 22,000 acre-feet of Colorado River water could displace an equal amount of water that would otherwise have been made available to Central Arizona Project agricultural water users in surplus water years. As a practical matter, however, we believe that the actual displacement of CAP agricultural supplies by the importation of these additional supplies is likely to be much less, because of practical constraints on system capacity and the distinct possibility that the imported supplies would be scheduled for delivery at times other than those during which CAP agricultural water supplies are delivered.

Our agricultural CAP water users suggested that, as a means of mitigating adverse impacts of the settlement proposal on capacity available for the delivery of Central Arizona Project agricultural supplies, (1) imported supplies ought to be given "last place" when competing uses preclude delivery of both Central Arizona Project water supplies and additional imported supplies, and (2) any water supplies leased by an Indian Community to a municipal and industrial entity should be subjected to the same 11% per month restriction that applies to the delivery of non-Indian CAP water supplies. The settlement agreement provides that the Salt River Pima-Maricopa Indian

Community shall lease its 13,300 acre-feet of Central Arizona Project water to the City of Phoenix. The water delivery contracts applicable to non-Indian users of the Central Arizona Project provide that the United States and the CAWCD shall have no obligation to deliver more than 11% per month of such a contractor's entitlement to Central Arizona Project water. This same restriction does not, by and large, apply to deliveries of Central Arizona Project water to Indian entities. However, as part of the Agreement in Principle, the City of Phoenix has stipulated that the same 11% per month restriction that applies to its other CAP water supplies shall also apply to the Central Arizona Project water supplies to be leased to the City by the Indian Community. This establishes that the parties to such settlements must find a means of eliminating or mitigating potential adverse impacts on CAP system capacity of proposals involving the use of the CAP facilities. This is consistent with the Board's Statement of Policies and Principles.

Third, the Board considered the potential impacts of the proposed settlement on the power resources available to the Central Arizona Project and on CAP operation, maintenance and replacement expenses. Briefly, the settlement provides that the additional water supplies to be delivered to the cities participating in the settlement shall be delivered to such cities at an operation, maintenance, and replacement cost equal to that borne by Central Arizona Project water, and that the cities shall pay all such costs. This has the effect of providing that the

Central Arizona Water Conservation District and its water users shall be held whole as to all operation, maintenance, and replacement costs associated with the delivery of such supplies. However, it does potentially deprive the District and the United States of the opportunity to market the power supplies needed to pump this additional water. The marketing of such power would assist in repayment of the costs of the Central Arizona Project. The principle of marketing power supplies surplus to a Reclamation project's power needs for the purposes of generating additional revenues to assist in project repayment is well established in Reclamation Law, and indeed, the power supplies to be used to deliver the 22,000 acre-feet of additional water to be imported for the cities to facilitate this settlement would in major part be surplus to Central Arizona Project power needs, and accordingly, marketable at some potential benefit to the United States, the Central Arizona Water Conservation District, and its taxpayers. However, in order to facilitate this settlement, and because the agreement otherwise provides that the District shall be relieved of any capital cost repayment obligation associated with the delivery of these water supplies, the Board of Directors of the District has elected not to insist that the Central Arizona Water Conservation District receive optimum value from the power supplies to be used for the delivery of this additional water, as the Statement of Policies and Principles adopted by the Board would otherwise require.

Fourth, the Board of Directors of the District has considered the impact of the settlement on the repayment of the capital costs of the Central Arizona Project. It is important to note that the Central Arizona Water Conservation District receives no water service capital charges from the cities participating in the settlement for the delivery of the 22,000 acre-feet per year of water to be obtained from the Colorado River, the delivery of any additional water over and above 22,000 acre-feet from the Roosevelt Water Conservation District or agricultural CAP water supplies generally, or the delivery of the 13,300 acre-feet per year of CAP water leased to the City of Phoenix by the Indian Community. Because of this, and in order not to harm the Central Arizona Water Conservation District, its other water users and taxpayers, the settlement agreement necessarily provides that the Central Arizona Water Conservation District shall have no repayment obligation for the capital costs associated with the delivery of these water supplies. Section 7(a)(2) and applicable portions of Section 8(d)(2) of HR 4102 and S 2153 are intended to achieve this result, which is critical to the District's support of the proposed legislation.

Finally, it should be noted that other benefits have been achieved as a result of these settlement negotiations. Perhaps most important, from our perspective, the negotiations establish an important principle of consultation with the Central Arizona Water Conservation District and its water users when the Central Arizona Project and its resources are to be used to facilitate such settlements. As we have pointed out, there was some potential for the settlement to have had an adverse impact on agricultural water users of the Central Arizona Project. However, as a result of the compromise reached between the Central Arizona Water Conservation District and the other parties to the settlement, which is outlined in Exhibit A, we believe that that potential has been substantially reduced.

It will still be necessary for the settlement documents to be revised to incorporate the Agreement in Principle attached as Exhibit A. However, the parties are actively engaged in that effort, and there is every reason to believe that that effort will be successfully completed. Further, there may be some need to amend certain aspects of the proposed legislation now before you in order to clarify the parties' intent and incorporate the compromises reflected in the Agreement in Principle, attached. Finally, the District does have certain concerns about Section 9(a) of HR 4102 and S 2153 which must be addressed. However, we have the firm commitment of the other parties to the settlement to make the necessary changes.

With these understandings, the members of the District's staff appearing before you today continue to support the settlement and will urge the Board of Directors to approve final documents prepared for purposes of embodying the compromises necessary to make this settlement a reality.

41.7

EXHIBIT A

Agreement in Principle -- 3/3/88

1. Up to 5,000 AF of RWCD CAP Ag water will be used to support up to 27,000 AF delivery to the City Exchange during non-shortage years.

   A. Ag water used to meet the 3,000 AF requirements for the City Exchange will come from RWCD's CAP Ag entitlement, so long as RWCD can supply the water within the limits of its entitlement.

      (1) So long as the water is supplied from the RWCD CAP Ag entitlement, the water is subject to reduction in the same manner as the RWCD's entitlement.

      (2) To "firm up" supply to City Exchange, up to a maximum of 5,000 AF per year would be delivered to Cities from RWCD CAP entitlement. The reasons for the increase from 3,000 AF to 5,000 AF are as follows: RWCD's CAP entitlement is expressed as a percentage of the total CAP Ag supply. Thus, in some years, amounts of water available to City Exchange could be less than 3,000 AF. In addition, to compensate for system losses, an additional 1,000 AF delivery to the City Exchange is necessary, bringing the total to 5,000 AF. 5,000 AF will be delivered when water is in fact available to offset anticipated reductions in available Ag supplies and system losses.

      (3) RWCD delivery requirements will be met first, up to 8,000 AF; up to 5,000 AF will thereafter be delivered to City Exchange; balance over 13,000 AF will be delivered to RWCD.

      (4) RWCD will continue to be obligated for OM&R costs associated with its CAP Ag entitlement [RWCD and Cities will contract separately for indemnification of RWCD for all CAP costs to RWCD associated with City Exchange water made available by RWCD].

      (5) The capital costs associated with deliveries of RWCD CAP Ag water to the Cities shall be treated as non-reimbursable.

      (6) 5,000 AF of RWCD CAP Ag water made available to the City Exchange will be presumed to be scheduled for delivery by Cities, and delivered to Cities participating in City Exchange, prior to delivery of any portion of the Cities' existing CAP M&I subcontract supplies.

(7) RWCD will select its contract entitlement, based upon its own evaluation of potential supplies and its own requirements. See Attachment.

(8) RWCD will contractually relinquish 5,000 AF of CAP Ag water to which it would otherwise have been entitled in the reallocation. See Attachment.

B. When RWCD's CAP Ag entitlement is so reduced as a result of a reduction in RWCD's eligible acreage that RWCD can no longer supply 3,000 AF of water in a normal year to the City Exchange, then City Exchange water will be charged to general CAP Ag pool to extent of the difference. [At this time, RWCD and other urbanized areas, through conversions, will have "returned" substantial amounts of water to the CAP Ag pool.]

(1) The Cities shall be responsible for OM&R costs associated with all CAP Ag water delivered or made available for delivery to the City Exchange.

(2) The capital costs associated with deliveries of CAP Ag water to the Cities shall be treated as non-reimbursable.

(3) CAP Ag water made available to the City Exchange will be presumed to be scheduled for delivery by Cities, and delivered to Cities participating in City Exchange, prior to delivery of any portion of the Cities' existing CAP M&I subcontract supplies.

C. Deliveries of SRPMIC leased CAP water will be subjected to 11% delivery restriction but CAWCD will allow higher deliveries if possible.

(1) CAWCD will, if possible, surcharge the aqueduct by an additional 50 CFS or other amount between New Waddell Dam and Union Hills treatment plant so as to minimize downstream impact on aqueduct capacity.

D. The 22,000 AF of Colorado River water obtained for the Cities under the Settlement Agreement will share losses pro-rata with all other water supplies delivered through CAP facilities in surplus, normal, and shortage years.

E. M&I delivery during shortage will be based on 26,000 AF contract entitlement versus 22,000 AF supply, as exemplified in the attached Tables.

F. Agricultural CAP subcontractors will be asked to assent to the above.

Attachment

RWCD's Ag entitlement shall remain at 5.98% of the Ag supply unless RWCD advises CAWCD, prior to the issuance of Notice of Completion of the Project, that it wishes to reduce its contract entitlement to a smaller percentage of the Ag supply. CAWCD may at any time require RWCD to specify the precise percentage of the Ag supply to which it will be entitled by issuing RWCD notice that it must specify such percentage within six months of the date CAWCD issues the notice. In the event RWCD fails to make such specification, its entitlement shall be fixed at 5.98% of the Ag supply. RWCD may, at the time it advises CAWCD of its percentage entitlement, or at the time it specifies the entitlement, relinquish all or part of its rights to reallocation of water attributable to the conversion of Ag water to M&I purposes, and all or part of its rights to the reallocation of water for which Ag water contracts were not executed, provided RWCD shall relinquish at least 5,000 acre-feet of the water to which it is entitled in the reallocation of Ag water for which Ag water contracts were not executed. RWCD will select its contract entitlement based upon its own evaluation of potential supplies and its own requirements.

34.21

SRPMIC Water Rights Agreement — Table 1 - Page 1 of 2

No Adverse Impact on Indians

		Units: Acre-Feet	
CAP Water Available from Colorado River:		768,323	
SRPMIC Agreement Water Purchased:		22,000	
Assumed Losses:		75,000	
• Percent Losses Shared by CAP Water:		97.22%	
• Percent Losses Shared by Agreement Water:		2.78%	
CAP Water Calculations			
• CAP Water Available:		768,323	
• Losses Attributable to CAP Water:		72,912	
Total CAP Water Available for Delivery:		695,411	
Settlement Water to Ak Chin Indians:		50,000	
Remaining CAP Water to be Delivered:		645,411	
• Percent to Indians (258,323/768,323):	33.62%		
• Percent to M&I (510,000/768,323):	66.38%		
Preliminary Amount Available for Delivery to Indians*:		216,998	
Preliminary Amount Available for Delivery to M&I:		428,413	
• Ak Chins' Percentage (52,470/258,323):		20.31%	
• Available to Ak Chin*:		44,076	
• Req'd Ak Chin Delivery in Shortage Year:		72,000	
• Total (CAP+Settlement) Avail to Ak Chin:		94,076	
• Ak Chin Water to be Redistributed:		22,076	
• Redistribution to Indians (33.62%):		7,422	
• Redistribution to M&I (66.38%):		14,654	
Total Water Available to Indians:		252,344	
Total CAP Water Available to M&I:		443,067	A
SRPMIC Agreement Water Calculations			
• Total Agreement Water Purchased:		22,000	
• Losses Attributable to Agreement Water:		2,088	
Total Agreement Water Credit:		19,912	B
Sum of SRPMIC Agreement Entitlements:		26,000	C
Total Water Available to M&I (A + B):		462,979	D
Total of M&I Entitlements (638,823 + C):		664,823	E
Percent of Total M&I Entitlements Avail for Delivery (D/E):		69.64%	F

* In addition to Ak Chin Settlement Water.

CAWCD 3/3/88

CAP Water Available from Colorado River: 768,323 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	2,833	2,855
Peoria	17,849	2.79%	0.00%	0	12,338	12,430
Glendale	14,083	2.20%	14.40%	3,744	9,735	12,415
Phoenix	113,882	17.83%	79.36%	20,634	78,721	93,676
Scottsdale	19,702	3.08%	4.80%	1,248	13,619	14,589
Chaparral City	6,978	1.09%	0.00%	0	4,824	4,859
Prescott	7,127	1.12%	0.00%	0	4,927	4,963
Payson	4,995	0.78%	0.00%	0	3,453	3,478
Tempe	4,315	0.68%	0.36%	94	2,983	3,070
Mesa	29,527	4.62%	0.36%	94	20,411	20,628
Apache Jct	6,000	0.94%	0.00%	0	4,147	4,178
Chandler	3,663	0.57%	0.36%	94	2,536	2,620
Gilbert	7,235	1.13%	0.36%	94	5,001	5,104
Casa Grande	8,884	1.39%	0.00%	0	6,141	6,187
Tucson	148,420	23.23%	0.00%	0	102,595	103,359
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

(X+Y)*[(A+B)/(C+638,823)] where
X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

CAWCD 3/3/88

SRPMIC Water Rights Agreement — Table 2 - Page 1 of 2

No Adverse Impact on Indians

		Units: Acre-Feet	
CAP Water Available from Colorado River:		450,000	
SRPMIC Agreement Water Purchased:		22,000	
Assumed Losses:		75,000	
• Percent Losses Shared by CAP Water:		95.34%	
• Percent Losses Shared by Agreement Water:		4.66%	
CAP Water Calculations			
• CAP Water Available:		450,000	
• Losses Attributable to CAP Water:		71,504	
Total CAP Water Available for Delivery:		378,496	
Settlement Water to Ak Chin Indians:		50,000	
Remaining CAP Water to be Delivered:		328,496	
• Percent to Indians (258,323/768,323):	33.62%		
• Percent to M&I (510,000/768,323):	66.38%		
Preliminary Amount Available for Delivery to Indians*:		110,446	
Preliminary Amount Available for Delivery to M&I:		218,050	
• Ak Chins' Percentage (52,470/258,323):		20.31%	
• Available to Ak Chin*:		22,433	
• Req'd Ak Chin Delivery in Shortage Year:		72,000	
• Total (CAP+Settlement) Avail to Ak Chin:		72,433	
• Ak Chin Water to be Redistributed:		433	
• Redistribution to Indians (33.62%):		146	
• Redistribution to M&I (66.38%):		288	
Total Water Available to Indians:		160,158	
Total CAP Water Available to M&I:		218,338	A
SRPMIC Agreement Water Calculations			
• Total Agreement Water Purchased:		22,000	
• Losses Attributable to Agreement Water:		3,496	
Total Agreement Water Credit:		18,504	B
Sum of SRPMIC Agreement Entitlements:		26,000	C
Total Water Available to M&I (A + B):		236,842	D
Total of M&I Entitlements (638,823 + C):		664,823	E
Percent of Total M&I Entitlements Avail for Delivery (D/E):		35.62%	F

* In addition to Ak Chin Settlement Water.

CAWCD 3/3/88

CAP Water Available from Colorado River: 450,000 Acre-feet

City	(X) Original CAP Allocation (AF)	Percent of Total M&I Allocation	Percent of SRPMIC Agreement	(Y) SRPMIC Agreement Entitlement (AF)	Delivery Without Agreement (AF)	Delivery With Agreement* (AF)
Avondale	4,099	0.64%	0.00%	0	1,385	1,460
Peoria	17,849	2.79%	0.00%	0	6,031	6,359
Glendale	14,083	2.20%	14.40%	3,744	4,759	6,351
Phoenix	113,882	17.83%	79.36%	20,634	38,481	47,921
Scottsdale	19,702	3.08%	4.80%	1,248	6,657	7,463
Chaparral City	6,978	1.09%	0.00%	0	2,358	2,486
Prescott	7,127	1.12%	0.00%	0	2,408	2,539
Payson	4,995	0.78%	0.00%	0	1,688	1,779
Tempe	4,315	0.68%	0.36%	94	1,458	1,571
Mesa	29,527	4.62%	0.36%	94	9,977	10,552
Apache Jct	6,000	0.94%	0.00%	0	2,027	2,137
Chandler	3,668	0.57%	0.36%	94	1,239	1,340
Gilbert	7,235	1.13%	0.36%	94	2,445	2,611
Casa Grande	8,884	1.39%	0.00%	0	3,002	3,165
Tucson	148,420	23.23%	0.00%	0	50,151	52,874
Total				26,000		

No Adverse Impact on Indians.

* Distribution of all water available to M&I in accordance with new M&I shortage percentage as follows:

$(X+Y)*[(A+B)/(C+638,823)]$ where

X = entity's original CAP allocation (AF)
Y = entity's SRPMIC agreement entitlement (AF)
A = total CAP water available to M&I (AF)
B = agreement water purchased less losses (AF)
C = sum of SRPMIC agreement entitlements (AF)
638,823 = sum of original CAP M&I allocations (AF)

CAWCD 3/3/88

EXHIBIT B

STATEMENT OF POLICIES AND PRINCIPLES REGARDING THE USE OF CAP FACILITIES TO FACILITATE INDIAN WATER RIGHTS SETTLEMENTS

Policy

The Board of Directors of the Central Arizona Water Conservation District recognizes that unresolved Indian water rights claims are a constraint on orderly and efficient water management. The Board recognizes that a broad public benefit is a potential result of resolution of these claims, and wishes to lend the resources of the District to efforts to realize those benefits while protecting the ability of the CAP to accomplish its primary purpose of delivering CAP water to CAP customers. Accordingly, we support and direct the use of CAP facilities to facilitate Indian water rights settlements which we find to be consistent with our basic responsibilities. As a general condition, we find that such settlements should be implemented and given priority over non-Project uses of CAP facilities, subject to the following principles:

Principles:

1. Water Supply
    - a) There should be no adverse impact on water supplies otherwise available for CAP.
    - b) There should be no adverse impact on CAP users that are not parties to the settlement.
    - c) Supplemental water supplies delivered through CAP facilities should share losses pro rata with all other water supplies delivered through such facilities.

2. System Capacity

   There should be no reduction in the delivery capacity otherwise available to existing CAP subcontractors (i.e., there should be no change required in the anticipated water delivery schedules of those that are not parties to the settlement).

3. Navajo Power

   a) There must be no reduction in Navajo Surplus available for long term marketing under the Navajo Marketing Plan.

   b) The settlement should not interfere with the District's receiving optimum value from the sale of short term Navajo Surplus.

   c) At no time may the power costs to settlement participants be less than those paid by CAP water users generally.

4. O&M Costs

   The settlement should provide for the recovery of an appropriate charge to offset fixed O&M costs associated with the delivery of settlement water supplies.

5. Repayment

   Water delivered through Project facilities to facilitate Indian settlements (such as replacement water and water leased by Indians to non-Indians) should be treated as if it were

> Project water delivered to Indian entities for purposes of determining CAWCD's repayment obligation.

Subject to the foregoing principles, each proposed settlement should be considered on its own merits. The Board's approval of any particular settlement shall not be regarded as establishing any precedent for any other settlement.

34.17

Statement of
the
STATE OF ARIZONA

TO THE JOINT COMMITTEE OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

presented by
ACTING GOVERNOR ROSE MOFFORD, STATE OF ARIZONA
MARCH 24, 1988

In support of S. 2153 and H.R. 4102.

I thank the Chairmen and members of this important committee for this opportunity to express support for Senate Bill 2153 and House Resolution 4102 which provide for the settlement of water right claims by the Salt River-Pima Maricopa Indian community.

The issue of Indian and other federal reserved water rights continues to be one of the most troubling to deal with in Arizona where water is in short supply. The Winters Doctrine of Indian reserved water rights is a recognized aspect of western water law and the right of Indian tribes to develop their reservation lands is unquestioned. However because Winters rights do not depend on past use of water, uncertainty as to the magnitude of Indian water right claims makes administration of rights difficult and subject to longstanding junior appropriators having their use of water cut back or terminated, disrupting the economies they represent.

There are 21 Indian reservation areas in Arizona, of these, six have for all practical purposes reached a final settlement over their Winters Doctrine water rights. This leaves 15 reservation areas with their water right claims unquantified. Determination of the extent and priority of these water rights is a monumental task but one which must be accomplished either through settlement such as the one we are addressing today or through an adjudication process.

The State of Arizona is currently involved in an extensive adjudication of water rights in both the Gila River and Little Colorado River systems. This process is guaranteed to be long, laborious and expensive. Settlements such as the one which will be accomplished with this bill helps speed this process and make it less expensive. The legislation before you addresses only one of many reservations but it is a significant step in the right direction.

Final determination of water rights on any Indian reservation is important, however, resolution of the claims by the Salt River-Pima Maricopa Indian community are of great importance and urgency to the state and to the residents in the Phoenix metropolitan area. One only need be familiar with the extensive law suits filed by the Indian community and the United States against water users in the Salt River valley to understand the positive, significant impact this settlement will achieve. The on-going litigation can be terminated and the adjudication litigation can be minimized.

The agreement which was reached by the parties contains a sophisticated water budget for the distribution of available supplies and a sophisticated mechanism for financing development of those supplies. The negotiators of the agreement deserve a great deal of credit for their determination to resolve this issue.

One of the principles embodied in the settlement agreement is that there would be no adverse impacts to persons not a party to the settlement. While there is some dispute regarding the impacts on non-parties, any affects are minor and are more of principle rather than of substance. On balance this is a good settlement.

Arizona has embarked on a sophisticated groundwater management program. In 1980 the state enacted the Groundwater Management Act which establishes goals for managing the groundwater supplies in four management areas in the state. These areas are called active management areas and the Salt River Valley is in the Phoenix Active Management Area. One of the goals established by the Groundwater Management Act is to reach safe-yield in the Phoenix Active Management area by year 2025. Safe-yield is defined as a balance between the average withdrawal from a groundwater basin and the average recharge to the basin. This will be achieved principally through conservation and augmentation efforts. We are well on the way to reaching this goal. The Second Management Plan, now being developed, will set forth the conservation standards that users must comply with during the 10 years between 1990 to 2000. Developing a management program to reach the stated goal is difficult on its own. But imagine the additional problems and uncertanties before us when there are Indian reservations with unquantified water rights in the management area. It is impossible to plan a program to manage the limited water resources when future users on the reservations are unknown. Quantification of the Indian water rights as provided in the settlement agreement to be ratified by this legislation will help us a great deal in planning to reach our objective.

The settlement agreement calls for the State of Arizona to contribute $3 million to a trust fund to be used for water development projects on the reservation. This amount is an estimate of the savings which the State will realize through reduced litigation in the Gila River adjudication. I am prepared to support this funding, however you must be aware that the State Legislature must first make an appropriation.

Mr. Chairman and members of this committee I urge your support of this important legislation.

TESTIMONY
OF
JOHN E. SMITH, PRESIDENT
MARICOPA-STANFIELD IRRIGATION & DRAINAGE DISTRICT
BEFORE THE HOUSE INTERIOR COMMITTEE
CONCERNING H.R. 4102

Mr. Chairman and Members of the Committee:

I am John E. Smith, President of the largest CAP agricultural water contractor, Maricopa-Stanfield Irrigation & Drainage District located in Pinal County, Arizona. I am a farmer by occupation and have been for most of my life. I have farmed in western Pinal County for over thirty years and I am a lifelong resident of Arizona.

I appreciate the opportunity to appear here today to oppose the passage of H.R. 4102 and its companion Senate Bill. I do not do this lightly but feel that this settlement agreement attacks two very basic rules contained in the allocation of Central Arizona Project water which directly impact the CAP water supply available to my District. Because of that, my District cannot stand silent because once the gates are open, we do not know where this invasion of our contract rights will stop.

Let me say that I agree with the principle that Indian water right claims should be settled rather than litigated. Besides being costly, litigation is time consuming and unpredictable, and during the period of time spent in litigation, nobody is certain as to what they can do. And I would further agree that settlements among the parties to the lawsuit generally should be favored. However, just because we would agree that Indian water right claims should be settled does not mean that any settlement should be accepted without question. In this particular case, this settlement agreement directly affects my District's rights to CAP water and we were not consulted at any time during the settlement negotiations. To approve settlement agreements that adversely impact the rights of non-participants in the settlement is wrong. That is what this settlement does.

Let me give you a farmer's view of the Central Arizona Project. This view is based upon my thirteen years as a member of the Arizona Power Authority and my twenty some odd years as President of Maricopa-Stanfield Irrigation & Drainage District. Back in the sixties, my District supported the passage of what became the Colorado River Basin Project Act. When the authorizing legislation for the Central Arizona Project was being worked up, it was deemed to be a "rescue project" for the agricultural lands in Central Arizona. Indeed, the Act itself stated that the project was to provide "for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies," and then, for municipal, industrial and other beneficial purposes (§ 102 Title I Pub. L. No. 90 537, 43 U.S.C.A. § 1501). The Act goes on to state that the construction of the CAP is for the purposes of furnishing irrigation water and municipal water supplies to water-deficient areas of Arizona. (43 U.S.C.A. § 1521(A)) The purpose was to reduce the pumping of groundwater which was declining at a rapid rate. This was emphasized by the provisions of the Master Water Contract between the United States and the State of Arizona which require that agricultural users reduce their groundwater pumping in an amount equal to the amount of CAP water received.

However, by 1972 when the Master Water Contract was negotiated with the Federal Government, what was intended by Congress to be a rescue project for central Arizona agriculture became primarily a project for municipal and industrial users. In the Master Water Contract the State established priorities for the use of CAP water that put agriculture in a position secondary to M&I uses.

In other Federal reclamation projects, the lands receiving the project water have a right that is appurtenant to the land to receive a quantity of that project water. That entitlement to water remains with the land and if the land use changes from agriculture to municipal, that water right changes with the change in use of the land.

However, in the allocation process used in the Central Arizona Project, such is not the case. The final allocation order promulgated by the Secretary in March 1983 gave specific firm allocations in acre feet to cities, towns, water companies, mines, electric power plants, recreation and Indian Reservations. Non-Indian agriculture got what was left over. In an effort to placate non-Indian agriculturalists and to assure them of sufficient water availability so that distribution systems utilizing the CAP water would be built, it was stated as policy that non-Indian agricultural water users would receive water available to CAP facilities which was not being utilized by all others. It was projected that this would be a relatively substantial amount through the life of the project.

So it was clearly contemplated, not only by the State of Arizona but also by the Secretary of the Interior, that Indian uses and M&I uses would increase over time to the total amount allocated to these entities and that during the period of time when that water was not being used by them, as well as other Colorado River allottees, agriculture would have that water.

Based upon these assurances, my District and the Bureau was able to prove financial feasibility to build our distribution system. As part of that feasibility, we were required to sign a Water Supply Subcontract which gave my District approximately 21% of the non-Indian agricultural water (the largest single contractor for non-Indian agricultural water). In addition, we entered into a contract with the United States to build the irrigation distribution system which was estimated to cost $97.5 million. In this contract, we were required to issue General Obligation Bonds in an amount of no less than $19.5 million and agreed to repay the Federal investment of $78 million over a twenty-six year period. In order to bid up our $19.5 million, it was necessary to issue General Obligation Bonds in the amount of $26 million.

Now we find a settlement agreement that takes water away from our allocation which directly affects our ability to repay the Federal Government.

If we understand the proposed settlement correctly, Roosevelt Water Conservation District will take up to 5,000 acre feet of its agricultural water allotment and, contrary to the intent of the CAP, instead of using it for a beneficial use on farmlands in its District, it will make that water available to the cities and towns who are party to the settlement agreement. If the intent of the CAP was followed that amount of water which is not used by an irrigation district because its lands converted from farm land to subdivisions, that water would return to the agricultural pool and our contract with the United States and the State provides that we get our percentage share of that water. This is in keeping with the Secretary's allocation order that non-Indian agriculture was to receive water that is not being utilized by other CAP allottees. So instead of the water going back to the agricultural pool, it goes to the cities and the cities' CAP allocations are increased by that amount.

Thus, agricultural water is being used for M&I purposes not within the subcontractor's service area.

In addition, it is our understanding that when RWCD's land converts so that it no longer can supply 5,000 acre feet of agricultural water, then that 5,000 acre feet comes out of the agricultural pool. This recognizes that it should have gone to the agricultural pool in the first place but, again, it is somebody taking our water without our agreement and changing our contract without our agreement.

Insofar as the Indians are concerned, they are leasing irrigation water for 99 years to the City of Phoenix for use off the Reservation and not for irrigation purposes as intended by either Congress or the Secretary. This water was intended to be used for irrigation purposes on the Reservation and is accorded a lower priority than either Tribal Homeland water or M&I water.

Thus, not only does this settlement fly in the face of Secretary's allocation order but it is a direct raid on water that is available for non-Indian agricultural purposes. What are the effects of this raid?

It is clear from the CAP authorizing legislation, as well as the Master Water Contract, that major purpose of the Central Arizona Project was to reduce groundwater pumping. CAP water was to replace groundwater and be a substitute therefor. In addition, the Secretary of Interior forced the State to adopt a Groundwater Management Act. This Act recognizes that groundwater pumping is to be limited and restricted. This Act was approved by the Secretary of Interior as a precondition to his making any allocations. However, by approving a settlement which directly takes water from agriculture, these policies, promulgated by Congress and the Secretary and by the State, will be violated because agriculture will have to revert to pumping groundwater.

Thus, what started off to be an agricultural rescue project, attempting to alleviate the overdraft of the groundwater aquifer, will, with approval of settlements such as this, subvert the original intent of Congress and direct Indian water rights to off Reservation M&I users. It will not reduce groundwater pumping but, rather, will force groundwater pumping to be continued by agriculture and by the Indians. It will encourage the Indian Tribes to be brokers of water and will not make the Tribes economically self-sufficient as intended by the allocations.

Mr. Chairman, I wish to express my thanks for this opportunity to raise these issues with your Committee and I would respectfully request that your Committee uphold my District's contract rights, uphold the purposes of the Central Arizona Project, and uphold the Secretarial allocation orders, and urge the parties to reach a settlement that will not impact the rights of others who are not parties to the settlement.

1WDB53/11

TESTIMONY
OF
NORMAN R. PRETZER, PRESIDENT
CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT
BEFORE THE HOUSE INTERIOR COMMITTEE
AND THE SENATE SUBCOMMITTEE ON INDIAN AFFAIRS
CONCERNING H.R. 4102

Mr. Chairman and Members of the Committee:

My name is Norman R. Pretzer and I am President of Central Arizona Irrigation and Drainage District located in south central Pinal County, Arizona. This District is located half way between Phoenix and Tucson and comprises approximately 86,000 acres of highly productive farm land. We are the second largest single non-Indian agriculture contractor for CAP agricultural water. My District has been a supporter of the establishment of the Central Arizona Project since the early sixties.

I appear here today with John Smith, President of the Maricopa-Stanfield Irrigation & Drainage District, which is our neighbor to the northwest. I also appear on behalf of New Magma Irrigation & Drainage District which is located in northern Pinal County and comprises approximately 26,000 acres.

These three Districts which make up approximately 50% of the non-Indian agricultural water users of the Central Arizona Project want to go on record as opposing H.R. 4102 and its companion Senate Bill. We are joined in this opposition by the Cities of Casa Grande and Eloy.

The basis of our opposition is that, as John Smith has told you, this settlement agreement goes against the framework of the non-Indian agricultural allocation in that it takes water away from being available for non-Indian agriculture; it condones a massive rewrite of five Secretarial orders allocating not only Indian water but agricultural water; it rewrites the Colorado River Basin Project Act; and, it attempts to rewrite our contracts for water. We have also been informed that it is outside the Office of Management and Budget Guidelines for Indian water settlements and is also outside the guidelines promulgated by the Attorney General of the United States. It does give the five Central Arizona cities in Maricopa County a gift of water at Federal expense. These cities give up 20,000 acre feet and receive in return 27,000 acre feet, 22,000 of which are to be purchased with Federal dollars. So this really is not an Indian water rights settlement agreement but, rather, is a granting of water to five Central Arizona cities in the disguise of an Indian water rights settlement.

In the brief time that I have, I would like to point out that this settlement agreement constitutes a complete rewrite of the Secretarial orders dealing with the allocation of Central Arizona Project water.

In Secretary Watt's final order of allocation of Central Arizona Project waters, he stated that in each case:

> All water not contracted for, or contracted for but not expected to be utilized during interim periods will be retained under jurisdiction of the Secretary and will be marketed on an interim basis to expedite payment of the CAP.
>
> 40 A.F.R. 12447.

In this case we have Roosevelt Water Conservation District which has contracted for agricultural water but which is permanently selling 5,000 acre feet of that water to five favored cities. There is no time limit except when RWCD has finally converted all of its agricultural lands to houses, then it can no longer do this. We do not know when that will be but there is some intimation that some people expect it to be twenty to thirty years down the road. Does that qualify as an interim sale? Is that being marketed on an interim basis to expedite repayment of the CAP? It certainly is not when H.R. 4102 absolves anybody who receives that water from paying the capital costs associated with that water.

Is a ninety-nine year "lease" of Indian irrigation water to the City of Phoenix for M&I uses an interim sale? To ask the question is to give its own answer -- an obvious "no".

Is a ninety-nine year "lease" of Indian agricultural water for use off the Reservation with no capital cost to be repaid being marketed " ... on a interim basis to expedite repayment of the CAP"? Again, to ask the question is to state the answer -- an obvious "no".

We firmly believe that the settlement of Indian water right claims should be encouraged. We do not believe, however, that settlement agreements that rewrite ten years of history in Secretarial allocation orders and which directly and adversely impacts my District's ability to receive Central Arizona Project water should be approved. We would call to your attention that neither Maricopa-Stanfield, Central Arizona, New Magma Irrigation & Drainage Districts, the Cities of Eloy and Casa Grande and others were never consulted about this settlement agreement until after it became a matter of public record on the docket of the Central Arizona Water Conservation District. We applaud the staff of that District for calling it to our attention and pointing out that there were other problems with this settlement agreement, such as a problem dealing with capacity of the canals in order to handle the water; who was going to share in losses; would this water share in delivery curtailments; and was there real water being brought to the table in this settlement. The staff of the Central Arizona Water Conservation District feel that they have finally solved some of their problems. They feel that they have done the best that they can do.

We appreciate very much the opportunity to appear here today and to make this statement. We do not take this opposition lightly since it is unique and unusual that the water interests in Arizona have not been united concerning the Central Arizona Project.

However, we feel that this settlement agreement embraced in H.R. 4102 is so detrimental to our interests in a direct and substantial way and is not in keeping with the precedent of the Southern Arizona Indian Water Rights Settlement Act or the Settlement Act for the Ak-Chins, but rather sets a dangerous precedent that we cannot support it in its present form.

Mr. Chairman, we will be submitting through our attorney, William D. Baker, a more detailed explanation of these positions which we would ask to be incorporated in the record.

Thank you very much.

1WDB53/14

Brief
in Support of
Testimony of
JOHN E. SMITH and NORMAN R. PRETZER
to the
Joint Hearing of the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and the
HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
on
HR 4102
and
S 2153
DEALING WITH THE PROPOSED SETTLEMENT OF WATER RIGHTS CLAIMS OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY IN MARICOPA COUNTY, ARIZONA

March 24, 1988

The Boards of Directors of the Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation & Drainage District and New Magma Irrigation & Drainage District oppose the proposed settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community as set forth in HR 4102 and S 2153 (Settlement). This opposition is supported by resolutions of the City Councils of the City of Casa Grande, Arizona, and the City of Eloy, Arizona. We are further informed that the Board of Directors of Queen Creek Irrigation District question the Settlement provisions and that Harquahala Valley Irrigation District opposes the Settlement. Central Arizona, Maricopa-Stanfield and New Magma Irrigation & Drainage Districts (the Districts) are each legal subdivisions of the State of Arizona and are subcontractors for Central Arizona Project non-Indian agricultural water allocations. Each of these Districts is obligated to the Federal Government by contract to repay the construction costs of their respective irrigation distribution systems and are each is obligated to holders of their respective general obligation bonds, which bonds were necessary to be issued to pay each District's respective share of up front costs to aid in the construction of their irrigation distribution systems. Together, the Districts represent approximately 50% of the Central Arizona Project (CAP) non-Indian agricultural water allocation. Collectively, they represent approximately 201,000 acres of highly productive farmland in Central Arizona. Collectively, they have issued approximately $55.6 million of general obligation bonds to pay up front costs of the construction of their irrigation distribution systems and have already spent $49 million in construction costs and interest on their bonds. As a consequence, each of these Districts has a vital interest in any matter affecting CAP agricultural water.

As expressed in the testimony of John E. Smith, President of Maricopa-Stanfield Irrigation & Drainage District and Norman R. Pretzer, President of Central Arizona Irrigation and Drainage District, the proposed Settlement contains certain elements which the Districts, through action of their respective Boards of Directors, oppose.

In dealing with the proposed Settlement, the Districts are aware that the Central Arizona Water Conservation District (CAWCD) initially expressed its concern with the Settlement agreement. These concerns included: (1) whether or not the importation of 22,000 acre feet of pre-CAP Colorado River water was not already a part of the water available to the CAP; (2) whether the delivery of CAP agricultural water to the Cities by a CAP agricultural water subcontractor was a proper use of that water; (3) whether the importation of 22,000 acre feet of water would share in the system losses; and (4) whether the ninety-nine year lease of CAP Indian agricultural water to the Cities would be subject to delivery restrictions. In addition to those concerns, the Districts' Boards of Directors expressed their concerns over capacity of the canal to handle the importation of the Settlement water; the adverse impact that this Settlement has upon the CAP water allocation philosophies; the adverse impact that this Settlement has upon the CAP non-Indian agricultural water subcontracts; and the impact that this Settlement will have upon use of the CAP facilities.

Insofar as the latter is concerned, we must applaud CAWCD for the adoption of its policy dealing with the use of the CAP facilities for delivery of water for Indian water rights settlements. We believe that that policy is a fair one and, indeed, we supported the adoption of such a policy. However, since there is a great deal of speculation concerning the use of the CAP facilities for not only Indian water rights settlements, but also contractors for CAP water, one questions whether or not there is any capacity left for use of the CAP facilities by municipal interests to transport non-CAP water from non-project areas to their facilities within the project. At this point, nobody is aware of the magnitude of that use of the CAP facilities and its impact upon existing contractors. It is, however, an unresolved problem in the proposed Settlement.

In Summary, the Districts' opposition is based upon the following concerns: (1) the Settlement authorizes the permanent alienation of CAP Indian agricultural water to M&I uses off the Reservation; (2) the Settlement authorizes the delivery of CAP non-Indian agricultural water for M&I uses outside of the agricultural water subcontractors' service area; (3) the Settlement allows the Cities to invade the "agricultural pool" of water to satisfy their liabilities and responsibilities to meeting Indian claims in derogation of agricultural water supply subcontract provisions. All of these factors fly in the face of the provisions of the Colorado River Basin Project Act (Basin Act) (82 Stat. 885, 43 U.S.C. 1521, et seq.) as well as serving to rewrite the Secretarial allocation orders. The Settlement also violates provisions of the contract between the United States and the State of Arizona for delivery of water and repayment of the costs of the Central Arizona Project (Contract No. 14-06-W-245) (Master Water Contract) and it violates the terms and conditions of each of the Districts' water supply subcontracts with the United States and CAWCD.

Even though each District would support the principle that it behooves the parties to settle Indian water right claims rather than allow them to be settled through litigation, because of the seriousness of the components of the proposed Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement and its adverse impact upon each of these Districts and their respective Central Arizona Project water supply, we would submit the following in support of our opposition.

LEASING OF INDIAN CENTRAL ARIZONA PROJECT IRRIGATION WATER FOR M&I USE OFF THE RESERVATION FOR A PERIOD OF NINETY-NINE YEARS VIOLATES SECRETARIAL ALLOCATION ORDER, THE BASIN ACT AND MASTER WATER CONTRACT PROVISIONS

Despite at least five previous Secretarial allocation orders, the negotiators of the Salt River Pima-Maricopa Indian Community (SRPMIC) Water Settlement Agreement (Agreement) have agreed that, starting in the year 2000, the 13,300 acre feet of CAP Indian agricultural water allocated to SRPMIC should be leased for ninety-nine years for use off the reservation (Section 8(a)(2) and 8(d) of HR 4102). It is recognized by the proposed legislation that this transfer of CAP water is unique and should not be extended to any other water SRPMIC receives by the Agreement (Section 8(e)) even if it is Winters Rights water.

Despite Secretarial orders that say that this water was to be used on the "presently developed" irrigation lands on the Reservation, the Agreement allocates 100% of this water for M&I use on lands outside the current irrigated area of the Reservation. (See page 14 of the Agreement.) It further states that this water can be used for purposes other than irrigation.

The justification given for this is twofold: (1) to bring some money to the table to soften an otherwise already heavy raid on the U.S. Treasury to fulfill Federal obligations; and (2) sale or lease of water by Indian Tribes for use off the Reservation has a precedent in the Southern Arizona Water Rights Settlement Act of 1982.

The allocations of CAP water to the Indian communities of Central Arizona has had a long history. While it must be admitted that the Central Arizona Project (CAP) authorizing legislation (Colorado River Basin Project Act; P.L. 90-537) (Basin Act) does not specifically state that the CAP was intended to serve Indians, it is clear that some use of the CAP was to be made by Indians (See Section 304 of the Basin Act). As succinctly stated by Acting Secretary of the Interior Frizzell:

> As is clear from the legislative history, Congress did not regard the project as an Indian irrigation project ....
>
> 41 Fed. Reg. 45886.

Further, CAP waters are not "Winters Rights" waters since those rights apply to waters that are on or adjacent to the Reservation. (41 Fed. Reg. 45885.) This opinion has, in the past, been supported by the Salt River Agricultural Improvement &

Power District in its comments against the 1977 legislation introduced by Senator Edward Kennedy seeking to condemn the Wellton-Mohawk Project and transfer that water to the Indians.

Starting in 1972, various Secretaries of the Interior have issued either notices or "final" orders of allocations of CAP water. The latest allocation order was issued on March 24, 1983. (48 Fed. Reg. 12446, et seq.) In that order, the Secretary allocated a total of 309,828 acre feet of CAP water to twelve Indian entities, some of it for Tribal Homeland water and the rest of it for irrigation purposes. (48 Fed. Reg. 12447.) This order recognized and embraced previous Secretarial allocations to the Indians and included the statement that:

> ... to the extent water was available from the Project for irrigation purposes, it should be allocated on the basis of servicing 100 percent of the presently developed Indian lands during the early years of the Project. This would permit the Indians to maintain their agricultural capability as long as possible ....
>
> 41 Fed. Reg. 45886.

Indeed, the first Secretarial allocation order stated that SRPMIC would be allocated 13,300 acre feet " ... for irrigation use within the boundaries" of its reservation. (41 Fed. Reg. 45888, Emphasis Added.) This order further stated:

> Water allocated for agricultural use to each tribe by this decision is required to be used on the reservation of the tribe to which it is allocated. This restriction is consistent with Section 304 of the Basin Act. If water allocated to a tribe by this decision is used for the irrigation of Indian lands on the reservation, the capital costs of the project attributable to such water shall be either nonreimbursable or deferred, pursuant to Section 402 of the Basin Act ....
>
> 41 Fed. Reg. 45889.

The foregoing statement was adopted in the 1980 allocation order of the Secretary. In continuing the same allocation of irrigation water to SRPMIC, the Secretary stated that "as in the 1976 decisions, the allocations to ... Salt River ... [is] limited to irrigation uses on the reservation, except to the extent modified by the Winters Rights discussion below." (45 Fed. Reg. 81271.)

Thus, it is abundantly clear that the 13,300 acre foot allocation of CAP water to SRPMIC was for irrigation use on the Reservation. Its purpose was to "maintain" the then (1975) presently developed acres of irrigated land on the Reservation. This was in keeping with policies to provide a relatively dependable long term supply of water to support the Reservation economy.

Further, on Reservation use was necessary in order for the costs to be non-reimbursable pursuant to Section 402 of the Basin Act. Section 402 says that construction costs attributable to the irrigation of Indian lands can be non-reimbursable. If CAP irrigation water is used for non-irrigation purposes, can the costs attributable to getting the water to the Reservation be non-reimbursable? Not under Section 402 because the water is not being used to irrigate Indian lands. HR 4102 Section 8(d)(2), while not directly amending Section 402 of the Basin Act, attempts to do so indirectly and relieve any repayment obligation for this water.

Additionally, the use of CAP irrigation water for M&I purposes for ninety-nine years is contrary to past Secretarial allocations. If the SRPMIC needed water for M&I purposes, they were to apply for it. (45 Fed. Reg. 81269.) Apparently SRPMIC did not make such an application because the final allocations do not reflect an M&I allocation to SRPMIC. (48 Fed. Reg. 12447, 12448.)

Thus, this Agreement and HR 4102 directly change every Secretarial allocation concerning Indian CAP irrigation water by authorizing use of Indian CAP irrigation water for M&I purposes off the Reservation. This indirectly amends Section 402 of the Basin Act by making the costs of M&I non-Indian water non-reimbursable.

This Agreement does not deal with the priority problem. Here, Indian CAP irrigation water, which is subject to a 10% reduction in times of shortage, is being used for M&I purposes. Does this use remove the 10% reduction factor in times of shortage? If it does, then this is another attempt to change Secretarial allocation orders without considering the full impact on others.

The Southern Arizona Water Rights Settlement Act of 1982 is argued to be a precedent for the ninety-nine year lease of SRPMIC CAP irrigation water. However, the Congressional intent concerning the ability of the Tohons O'Odham Tribe to use any of the water covered by the settlement for irrigation use specifically says that the Tribe could "sell, exchange or temporarily dispose" of the water "but it may not permanently alienate" any water right. "Sale of water to non-Indians would be subject to recovery of appropriate charges." (House of Representatives Report No. 97-855 pp. 45-46. See also Senate Report No. 97-568 pp. 45-46.)

Comparing this SRPMIC Settlement with the 1982 legislation, one would find a completely different subject. In SRPMIC, a ninety-nine year lease of Indian agricultural water is made for M&I uses off the Reservation and at no Federal reimbursement. It stretches the imagination to say that ninety-nine years is not permanent. It really stretches the imagination if one says ninety-nine years is temporary.

Further, there is no question that SRPMIC's lease of water is supposed to be non-reimbursable. Section 8(d)(2) of HR 4102 specifically states that no capital costs should be recovered. This is quite different from the Southern Arizona settlement legislation. We are also informed that it is substantially different from the proposed settlement with the San Luis Ray Indians (5.795).

Indeed, in the first Indian water rights settlement legislation in Arizona, there was no authorization to sell, lease or use the water off the Reservation. (See Ak-Chin Indian Community, Water Rights P.L. 98-530.)

Thus, HR 4102 and its companion bill, S 2153, rewrite the Basin Act; rewrite Secretarial allocation orders which have been undisturbed since 1983; and, in practical effect, destroy the allocation theory by denying non-Indian agriculture the right to purchase waters available to the CAP that were not being used by current allottees for use within the allottees' service area. Such a fundamental change should not be authorized without a full consideration of its impacts, legal, economic and practical. Such a public discussion and consideration has not occurred.

THE LONG TERM ASSIGNMENT OF NON-INDIAN CAP AGRICULTURAL WATER FOR M&I USE OUTSIDE OF THE SERVICE AREA OF THE AGRICULTURAL WATER SUBCONTRACTOR VIOLATES THE BASIN ACT, THE SECRETARIAL ALLOCATIONS ORDER, THE MASTER WATER CONTRACT AND THE CAP WATER SUPPLY SUBCONTRACTS FOR AGRICULTURAL PURPOSES

While not specifically a part of either HR 4102 or of the Settlement Agreement, it is our understanding that an integral part of the Settlement Agreement is the fact that Roosevelt Water Conservation District (RWCD) will agree to deliver to the Cities from its CAP agricultural allotment 5,000 acre feet of water per year. The capital costs associated with deliveries of this water are to become non-reimbursable. At such time as conversion of RWCD's agricultural lands to municipal use has occurred (so that RWCD does not have any basis for an agricultural allotment), the Cities are authorized to invade the general CAP agricultural pool to satisfy their demands. (See CAWCD testimony for the outline of this portion of the Agreement.)

The Districts strenuously object to this feature of the Agreement on the basis that it violates the Secretarial allocation orders, it amends the Basin Act and violates the provisions of the Districts' contracts.

In the allocations to non-Indian agricultural users, the Secretary stated that these allocations were for agricultural purposes. Further, the Secretary retained the right to "contract for water sales on an interim basis where water allottees are not utilizing their full allotment." (48 Fed. Reg. 12449.)

Agricultural water is defined as CAP water used primarily in the commercial production of agricultural crops or livestock and incidental domestic uses. (Article 5.14 of the Master Water Contract.)

The Master Water Contract further provides that the Secretary may make irrigation water available for M&I uses "if and to the extent that such water is no longer required for irrigation purposes by the Subcontractor." (Article 8.8(vi).)

What we have here, in effect, is a permanent sale of up to 5,000 acre feet of agricultural water to Cities for M&I purposes. It is submitted that this is outside the intent of the Basin Act, is outside the allocation orders, and is outside the Master Water Contract.

The intent of the Secretarial retention of the right to contract for sales on an interim basis was an effort to maximize utilization of water supplies so that repayments of the CAP could be maximized. (48 Fed. Reg. 12447.) Here, nobody can argue that this is an interim sale. Interim generally means temporary. It certainly does not mean permanent.

It further is not being marketed " ... to expedite repayment of the CAP." In fact, the capital costs associated with this 5,000 acre feet are to become non-reimbursable.

The only authority for non-reimbursable costs is Section 402 of the Basin Act. This provides that only costs associated with Indian irrigation are non-reimbursable. However, in this Settlement that section is not followed. Here, this non-Indian agricultural water is designated as M&I water but also is to be treated as Indian water so that it is non-reimbursable.

Another feature in the Master Water Contract that is not followed is Article 8.8(b)(ii) which requires a reduction in pumping of groundwater within the agricultural subcontractor's service area by an amount equal to the amount of CAP water received. An argument probably could be made that since this agricultural water is being received by the Cities, the Master Water Contract does not require reduction in pumping. However, it is clear that this is still treated as agricultural water since it retains that priority. Since the purpose of the CAP was to reduce groundwater pumping, especially by agriculture, then this key provision should not be allowed to be overlooked.

This Settlement further violates Section 4.13 of the Water Service Subcontract between the United States, the Central Arizona Water Conservation District and these Districts. This section provides, inter alia, that in addition to its initial allocation, each District would receive the same percentage of the total reductions in other agricultural subcontractors' entitlements when lands were removed from agricultural use. In addition to that provision, if entitlements to agricultural water are not contracted for, then this is to be reallocated to other agricultural subcontractors.

Thus, if land goes out of production, the irrigation district's percentage share is reduced because its allotment is based upon the relationship of irrigable lands in the district to the total irrigable lands in all agricultural subcontractors' service areas. For example, if 5,000 acres of agricultural lands are converted to non-agricultural use and this reflects 1% of the district's eligible lands, then its allocation is reduced by 1% and the other agricultural subcontractors' entitlement is increased automatically.

Under the proposed settlement, that automatic increase is not only removed insofar as RWCD's entitlement is concerned, but, to exacerbate an already bad situation, the Cities are given a direct access to this water before the remaining agricultural subcontractors have a chance at it. This is in direct contradiction of the provisions of the agricultural water supply subcontract.

It could be argued that the agricultural water supply subcontract gives authority to sell this water. However, Section 4.3(c) of the subcontract clearly deals with annual sales of water not needed by the subcontractor, not with permanent or long term sales. This is in keeping with the Secretarial allocation order which retains authority in the Secretary to make interim sales which enhance repayment of CAP costs.

SUMMARY

The CAP has had a long and tortuous history. It resulted in the Arizona National Guard being called to active duty by the Governor and sent to the Colorado River to protect Arizona's interests in the Colorado River. It resulted in a lawsuit between two neighboring States that took many years before the Supreme Court of the United States decided the issue. It took many years to get the authorizing legislation approved by Congress and the President. It took many years to negotiate the Master Water Contract and to get grudging acceptance of Secretarial allocation orders. Now, however, when we find that precious water flowing through the CAP facilities, it is not justifiable to piecemeal amend the Basin Act, Secretarial allocation orders or even contracts. No matter how much we would support the principle that Indian water rights need to be settled and quantified, how can we abandon the agreements that took so long to reach in order for the Colorado River water to flow in Central Arizona? The tragedy of this Settlement is that it violates CAP history and seems to do so with relish. Despite all of the window dressing that surrounds this more than 400 page Settlement, the fact remains that nobody who is a party to the Settlement gives up anything other than perhaps RWCD. However, RWCD receives an assurance from the remainder of the parties to the Settlement that it has a valid water right to the waters of the Salt and Verde Rivers (which right had been in question) at the expense of a non-party to the Settlement, namely Arizona non-Indian agriculture, which is made to bear the burden of this agreement. Granted, some will argue that the burden has been softened in that the Cities did not just take 25,000 acre feet from non-Indian CAP agricultural allotments but, rather, had the Federal Government go out and buy 22,000 acre feet of such water from the Wellton-Mohawk project. However, the CAP allocation principle are violated in this particular Settlement to a far greater extent than in the Southern Arizona Water Rights Settlement Agreement.

To paraphrase Senator Dirksen's famous comment, "How long, oh how long, should Arizona non-Indian agriculture continue to sit by silently while its rights are taken without its consent?" These Districts, by opposing this settlement agreement, have said, "Enough!"

1WDB53/18

TESTIMONY of
CLYDE L. GOULD, GENERAL MANAGER and
TOM CHOULES, ATTORNEY
for
THE WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT
before
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE HOUSE COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS
LONGWORTH HOUSE OFFICE BUILDING
MARCH 24, 1988, 9:30 A.M.
ROOM 1324
supporting
S. 2153 and H.R. 4102
THE SALT RIVER WATER SETTLEMENT ACT

Mr. Chairman and members of the committee, my name is Clyde L. Gould, the Manager of the Wellton-Mohawk Irrigation and Drainage District and I am accompanied by Tom Choules, Attorney for the same district. We want to thank you for the opportunity to submit comment relative to the Salt River Water Settlement Act.

The Wellton-Mohawk Irrigation and Drainage District (District) is located in the southwestern corner of the State of Arizona and is a federal reclamation project authorized pursuant to the Gila Reauthorization Act of July 30, 1947 (61 Stat. 628).

The project was originally established as 75,000 irrigable acres of prime and unique agriculture lands and was subsequently reduced in size to 65,000 acres as a result of the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266).

The District has an allocation of 300,000 acre-feet (af) of Colorado River water measured as diversion less return flow in accordance with the "law of the river".

The District has no direct interest or involvement in the problems related to the Salt River Pima-Maricopa Indian Community (SRPMIC) water settlement. Neither are we a party to the water settlement contract agreement recently executed.

The SRPMIC agreement, and both S. 2153 and H.R. 4102 (Sec. 7), stipulate that the Secretary shall acquire 22,000 af of Colorado River water with a priority predating September 30, 1968.

There is no water in the State of Arizona that meets these criteria except in Yuma County. As a consequence, nearly two years ago, the irrigation districts in the county were approached by members of the Bureau of Reclamation and the Department of Interior to ascertain availability of the water needed to satisfy the pending Indian settlement agreement.

With a certain reluctance, the Wellton-Mohawk District agreed to look at the pros and cons of becoming a party to such an agreement. Extensive studies were undertaken; a draft agreement was worked out between the Bureau of Reclamation and the District; the District landowners with high water use lands were canvassed to see if there were sufficient willing-sellers to participate in such a program; and a public meeting was held to determine District landowner acceptance of such an action.

The result of this effort revealed the fact that the reduction of any District water allocation and the retirement of any irrigable acreage was indeed a controversial subject with less than unanimous agreement. However, we did develop a majority position for accommodation of the request for 22,000 af of Colorado River water, more as a concession rather than an absolute willingness.

The District Board of Directors have agreed to release 22,000 af of the District's allocation of Colorado River water, reducing the basic allocation by 22,000 af from 300,000 af to 278,000 af (diversion less return). To make it possible for this to be accomplished, 2,000 acres of remaining high water use land will be purchased and retired from production.

The stipulated terms and conditions for District participation in relinquishment of 22,000 af of Colorado River water are detailed in a Resolution of Agreement No. 601-87, authorized by the

District Board of Directors and signed December 22, 1987, attached hereto and identified as Exhibit No. 1. A brief summary of the salient points are as follows:

1) Reduce allocation from 300,000 af per annum (diversion less return) by 22,000 af to 278,000 af.

2) Reduce District's irrigable acreage from 65,000 acres by a minimum of 2,000 acres to 63,000 acres or less.

3) Acquisition of retired acreage will be funded by the United States and administered by either the Bureau of Reclamation or the District, to be determined by mutual agreement, from "willing sellers" of high water use lands, selected by the District.

4) The present consolidated contract with the United States shall remain in force except for supplemental changes required to accommodate the water transfer agreement.

5) The District's repayment owed to the United States pursuant to Article 12 of the consolidated contract will be discharged retroactively to May 31, 1987.

6) Legislation ratifying this agreement shall contain specific language to provide that notwithstanding any other provision of law, the Secretary, upon enactment of this legislation, shall issue a certificate, to be

recorded in Yuma County, Arizona acknowledging that all irrigable lands in the District are free of all ownership and full cost pricing provisions of the Federal Reclamation Law.

7) Return flow credits will be given for all groundwater pumped for return flow and certain surface waters flowing at the Dome gauging station in the Gila river as specified in Article No. 11 of Resolution No. 601-87.

8) This agreement is contingent upon the execution of all of the terms and conditions and adequate funding to accomplish the intent of the proposal.

9) Of particular importance to the District is the understanding that there will be no further water transfers from the District except by explicit consent of the Board of Directors of the District.

There has been implication made, by several parties involved with the Indian water settlement agreement, that the reduction of only 2,000 acres of land will not produce 22,000 af of water and further implication that the District is presently not using its full allocation of water, therefore, in accordance with the "law of the river" the unused water reverts to the river, available for others, hence, there is no need for a Wellton-Mohawk Irrigation and Drainage District water agreement.

These positions can only be assumed by parties who have not taken the time to fully access the facts. The District staff has undertaken considerable study of the operational records since 1964 and can fully respond to any apparent erroneous conclusion.

An operational model of a water budget has been established utilizing existing operational data with adjustments for retirement of 2,000 acres of irrigable land and reduction of 22,000 af of allocated water. We have used a return flow figure of 115,840 af to balance the diversion less return requirements. These tabular data are contained in Exhibits 2 through 9. From study of the data, the most likely acreage reduction lies in the area of 2,000 acres.

The data presented in the exhibits are extensive and somewhat technical in nature subject to study rather than casual interpretation. If there is need to investigate our position further for establishment of credibility, we will be more than willing to go over the exhibits to relieve any concern that any may have. It should be pointed out however, that statistics and water measurements associated with large, dynamic water delivery systems do not lend themselves to absolute precision, and as a consequence, experience and judgement are required to place proper perspective on the conclusions.

As a final statement, we would like to reiterate that we have become involved in this settlement primarily from a concessionary point of view.

Our main objective is to be relieved of the nonproductive administrative burdens and uneconomical constraints of the Reclamation Reform Act of 1982. Beyond that, our landowners have virtually no benefit from this settlement whatsoever.

Once again, we appreciate the opportunity to participate in this settlement hearing.

* * *

EXHIBIT NO. 1

WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

RESOLUTION OF AGREEMENT

RESOLUTION NO. 601-87

Salt River Pima-Maricopa/Wellton Mohawk
Irrigation and Drainage District Indian
Community Water Transfer

WHEREAS, the Salt River Pima-Maricopa Indian Community has agreed to a settlement of their water rights claims from certain non-Indian organizations located in central Arizona; and

WHEREAS, this settlement involves acquisition of 22,000 acre feet of water from the Colorado River system in perpetuity; and

WHEREAS, the Wellton Mohawk Irrigation and Drainage District herein referred as 'District', a political subdivision of the State of Arizona, agrees to provide 22,000 acre feet of Colorado River water in accordance with certain specific terms and conditions subject to ratification by the parties to the agreement, the United States Secretary of Interior and the House and Senate of the United States Government.

NOW THEREFORE BE IT RESOLVED that the District will release 22,000 acre feet of Colorado River water from its basic allocation under the following terms and conditions:

1) The District will reduce its Colorado River allocation of 300,000 acre feet per annum (diversion less return) by 22,000 acre feet to 278,000 acre feet per annum for use by the recipients named in the water transfer agreement.

2) To provide water for transfer, the District must reduce project irrigable acreage from 65,000 acres to 63,000 acres by purchase from willing sellers having high water use lands.

3) The District has made a survey of potential willing sellers having high water use lands and has reasonable assurance that this requirement can be accommodated.

   However, agricultural economics have changed considerably in the last two years which has resulted in a certain unknown resistance to a willing sale of these lands.

   The District has no power to compel a willing seller. In event the District is unable to acquire the necessary lands on a reasonable basis, the District shall be relieved of any proposed obligation under this agreement.

4) Land selection to provide the acquired 2,000 acres will be made by the District.

5) The actual land acquisition will be transacted by either the United States or the District or a combination of both, subject to terms and conditions mutually agreed to, preceding the work.

6) The purchase price of the acquired acreage and the cost of administration of the acquisition as well as weed control on the acquired lands will be funded by the United States or others, as necessary, excluding the District.

7) The terms and conditions of this agreement must be ratified by Congress. If Congress makes any changes by addition or deletion, the entire agreement shall be null and void.

8) The District's present consolidated contract with the United States shall remain in force except as supplemental changes are required to accommodate the terms and conditions of this agreement.

9) As condition precedent to this agreement, the project repayment owed to the United States by the District pursuant to Article 12 of the consolidated contract will be discharged, retroactive to May 31, 1987.

   This action will be effective on the date of notification by Congress and all payments made after May 31, 1987 will be refunded.

10) Legislation ratifying this agreement shall contain specific language to provide that notwithstanding any other provision of law, the Secretary, upon enactment of this legislation, shall issue a certificate, to be recorded in Yuma County, Arizona acknowledging that all irrigable lands in the District are free of the ownership and full cost pricing provision of the Federal Reclamation Law.

11) For purposes of computing consumptive use as required by Article V of the Supreme Court Decree of March 9, 1964 (Arizona v. California), return flow credit will be given for the two flows as follows:

    a) All drainage waters, from whatever source, pumped from areas within the exterior boundary of the District where Colorado River water is applied for irrigation purposes, which are delivered to Station 0+00 of the Main Conveyance Channel.

    b) Flows in the Gila River at the gauging station near Dome, Arizona, in excess of the flows at the gauging station near Mohawk, Arizona.

12) This agreement is contingent on adequate funding by proper allocation or allotment of funds as required; absence of authorization and allocation of funds shall relieve the District from all obligations associated with this agreement.

13) In view of the current intensity of activity to appropriate and transfer water from agricultural uses to municipal and industrial uses, this agreement is further predicated on the inclusion of language, associated with any water transfer documents, precluding any Congressional approval of water transfers from the Wellton Mohawk Irrigation and Drainage District without consent and approval of the District's Board of Directors.

BE IT FURTHER RESOLVED, that the President and Secretary of the District Board of Directors are hereby authorized to execute documents providing for the transfer of a portion of the District's Colorado River water allocation in accordance with the terms and conditions specified in this Resolution of Agreement.

PASSED AND ADOPTED this 22nd Day of December 1987.

Bruce Williams
President

C. L. Gould
Secretary

LOSS EVALUATION (USGS DIVERSION DATA)

EXHIBIT NO. 2

	IRRIG. AC	USGS IMP. DIV.	AF/AC	USGS RTN FLOW	DIV. -RTN	AF/AC	DELVD TO LAND AF	TOTAL LOSS	RTN/ DIV
	======	====	=====	====	=====	=====	=========	=====	====
1964	58,067	482,307	8.31	181,040	301,267				.375
1965	58,040	472,255	8.14	186,130	286,125				.394
1966	60,062	483,523	8.05	207,220	276,303				.429
1967	61,190	465,780	7.61	202,930	262,850				.436
1968	60,758	471,196	7.76	210,350	260,846				.446
1969	60,124	493,495	8.21	210,100	283,395	6.63	398,593	.192	.426
1970	60,756	511,252	8.41	215,110	296,142	6.88	417,769	.183	.421
1971	61,152	530,673	8.68	211,800	318,873	6.94	424,441	.200	.399
1972	62,351	500,148	8.02	206,630	293,518	6.67	416,076	.168	.413
1973	63,973	495,639	7.75	205,730	289,909	6.90	441,571	.109	.415
1974	65,472	546,271	8.34	206,400	339,871	7.26	475,280	.130	.378
1975	65,529	543,328	8.29	210,220	333,108	7.38	483,480	.110	.387
1976	60,684	489,410	8.06	203,235	286,175	7.08	429,818	.122	.415
1977	60,569	444,436	7.34	204,228	240,208	6.43	389,416	.124	.460
1978	60,651	449,276	7.41	185,027	264,249	6.34	384,286	.145	.412
1979	60,665	397,466	6.55	179,380	218,086	5.59	339,044	.147	.451
1980	60,656	441,234	7.27	192,695	248,539	5.86	355,456	.194	.437
1981	60,691	441,234	7.27	153,136	288,098	6.24	378,768	.142	.347
1982	60,846	399,973	6.57	149,055	250,918	5.65	343,476	.141	.373
1983	61,525	361,184	5.87	138,785	222,399	4.87	299,644	.170	.384
1984	61,857	405,154	6.55	124,373	280,781	5.66	350,163	.136	.307
1985	61,445	397,252	6.47	121,910	275,342	5.59	343,347	.136	.307
1986	61,682	426,690	6.92	115,500	311,190	5.94	366,166	.142	.271
1987	61,470	433,183	7.05	122,720	310,463	5.97	366,864	.153	.283
	61,614	415,570	6.74	121,126	294,444	5.79	356,635 2)	$\boxed{.142}$	.291

1984-87 4 yr avg

Loss Factor

Avg 24 yr 280,777

1983 PIK Program

Excess alloc (19,223)

1979-80 Gila Flow, Norton Siphon Pumping

(1) 1983-87 Acreages include surplus water acreage and water usage
1983 713; 1984 933; 1985 790; 1986 969; 1987 757
751 8,040 6,814 6,660 6,295

(2) 1984-87 Average including M&I (wtr dept. records)

10-23-86 CLG
8-27-87 Rev.
2-15-88 Rev.

EXHIBIT NO. 3

LOSS EVALUATION (USGS DIVERSION DATA)

	IRRIG. AC	USGS IMP. DIV.	AF/AC	USGS RTN FLOW	DIV. -RTN	AF/AC	DELVD TO LAND AF	TOTAL LOSS	RTN/ DIV
	======	====	=====	====	=====	=====	=========	=====	====
1964	58,067	482,307	8.31	115,840	366,467				.240
1965	58,040	472,255	8.14	115,840	356,415				.245
1966	60,062	483,523	8.05	115,840	367,683				.240
1967	61,190	465,780	7.61	115,840	349,940				.249
1968	60,758	471,196	7.76	115,840	355,356				.246
1969	60,124	493,495	8.21	115,840	377,655	6.63	398,593	.192	.235
1970	60,756	511,252	8.41	115,840	395,412	6.88	417,769	.183	.227
1971	61,152	530,673	8.68	115,840	414,833	6.94	424,441	.200	.218
1972	62,351	500,148	8.02	115,840	384,308	6.67	416,076	.168	.232
1973	63,973	495,639	7.75	115,840	379,799	6.90	441,571	.109	.234
1974	65,472	546,271	8.34	115,840	430,431	7.26	475,280	.130	.212
1975	65,529	543,328	8.29	115,840	427,488	7.38	483,480	.110	.213
1976	60,684	489,410	8.06	115,840	373,570	7.08	429,818	.122	.237
1977	60,569	444,436	7.34	115,840	328,596	6.43	389,416	.124	.281
1978	60,651	449,276	7.41	115,840	333,436	6.34	384,286	.145	.258
1979	60,665	397,466	6.55	115,840	281,626	5.59	339,044	.147	.291
1980	60,656	441,234	7.27	115,840	325,394	5.86	355,456	.194	.263
1981	60,691	441,234	7.27	115,840	325,394	6.24	378,768	.142	.263
1982	60,846	399,973	6.57	115,840	284,133	5.65	343,476	.141	.290
1983	61,525	361,184	5.87	115,840	245,344	4.87	299,644	.170	.321
1984	61,857	405,154	6.55	115,840	289,314	5.66	350,163	.136	.286
1985	61,445	397,252	6.47	115,840	281,412	5.59	343,347	.136	.292
1986	61,682	426,690	6.92	115,840	310,850	5.94	366,166	.142	.271
1987	61,470	433,183	7.05	115,840	317,343	5.97	366,864	.153	.267
	61,614	415,570	6.74	115,840	299,730	5.79	2) 356,635	$\boxed{.142}$	.279

1984-87 4 yr avg

Loss Factor

Avg 24 yr 345,925

1983 PIK Program Excess Usage 45,925

1979-80 Gila Flow, Norton Siphon Pumping

(1) 1983-87 Acreages include surplus water acreage and water usage
1983 713; 1984 933; 1985 790; 1986 969; 1987 757
751 8,040 6,814 6,660 6,295

(2) 1984-87 Average including M&I (wtr dept. records)

(3) Return flow set at 115,840 af to demonstrate diversion less return under restricted return flow conditions.

10-23-86 CLG
08-27-87 Rev.
02-15-88 Rev.

EXHIBIT NO. 4

Exhibits No. 4, 5, and 6 are submitted to demonstrate major events associated with implimentation of P.L. 93-320 and the flood flows of the Gila River.

Flood flows, the PIK program and certain Department of Agriculture "set aside" programs have significantly reduced the diversion less return water volumes during the years 1973-1985.

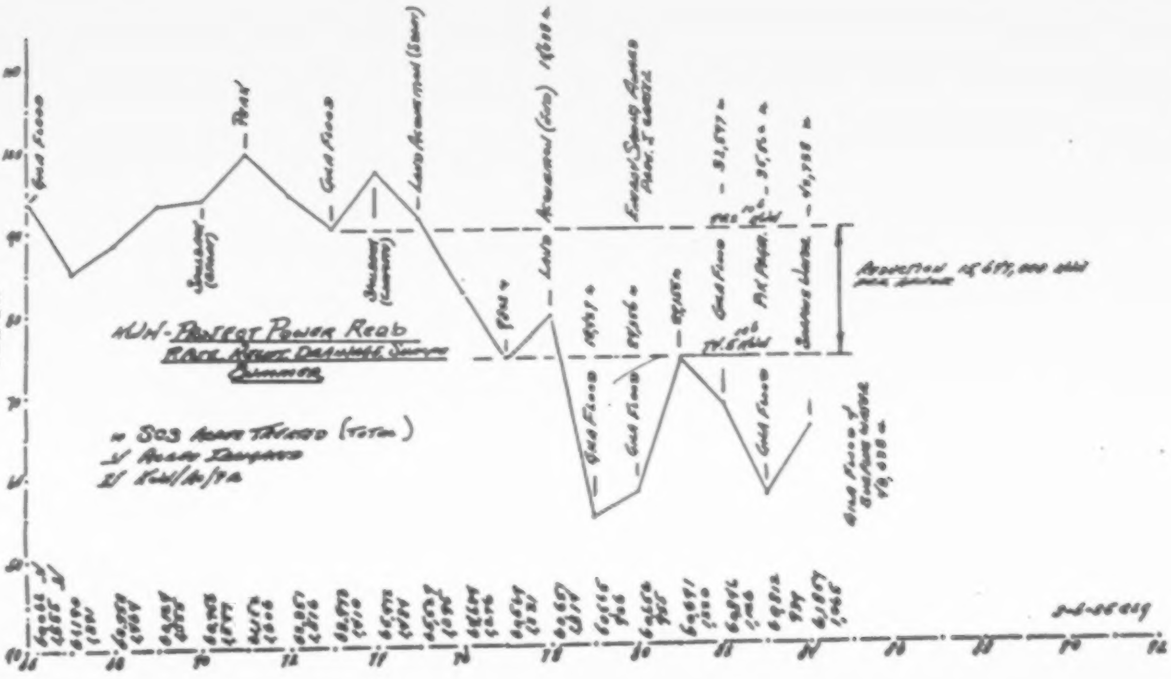
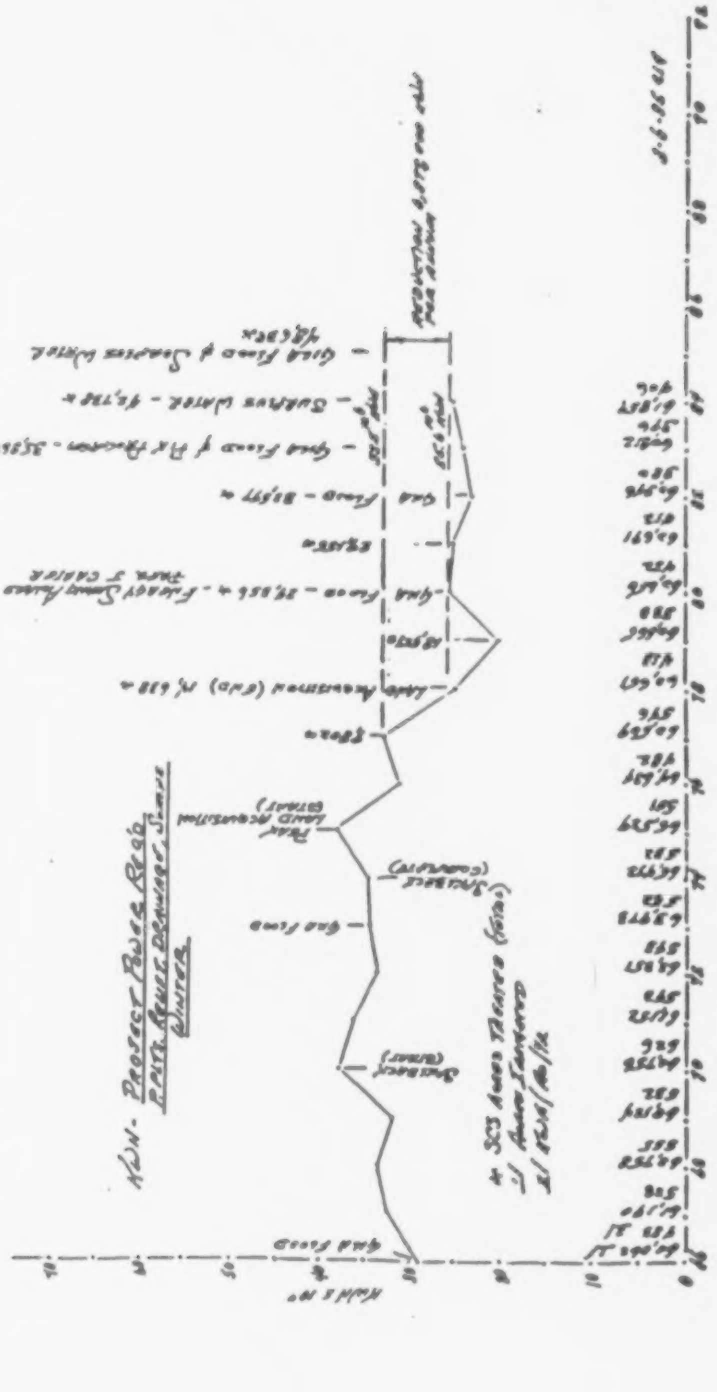


EXHIBIT NO. 5



173

EXHIBIT NO. 6

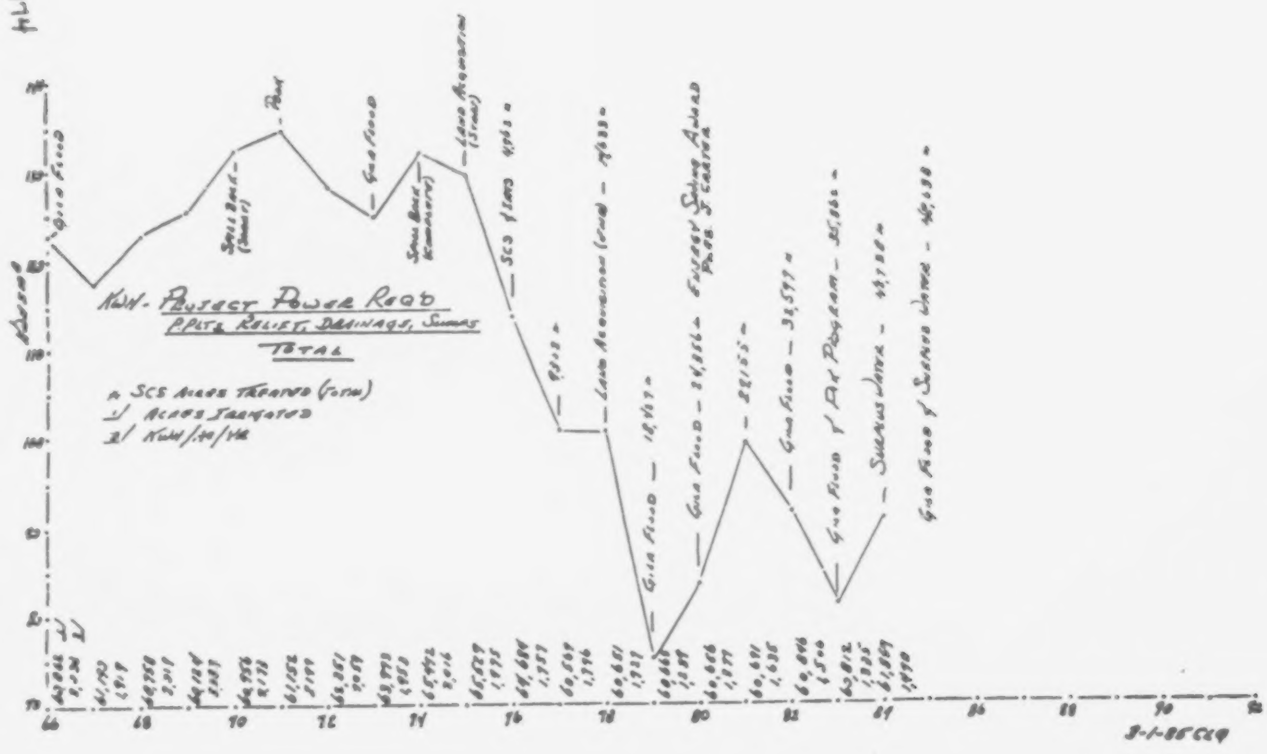

KWH - PROJECT POWER REQD
PPLTS, RELIFT, DRAINAGE, SUMPS
TOTAL
* SCS ACRES TREATED (TOTAL)
1/ ACRES IRRIGATED
2/ KWH/AC/YR
AVERAGE
Gila Flood
Spill Back (Sumps)
Peak
Gila Flood
Spill Back (Kommanns)
Land Acquisition (Sumps)
SCS Plans 4963 *
9303 *
Land Acquisition (Swap) - 17,833 *
Gila Flood - 18,457 *
Gila Flood - 24,856 * Salinity Award Pass
22155 *
Gila Flood - 32,577 *
Gila Flood of Ar Program - 35,880 *
Surplus Water - 43,780 *
Gila Flood of Surplus Water - 48,038 *
66
68
70
72
74
76
78
80
82
84
86
88
90
92
8-1-85 CLQ

EXHIBIT NO. 7

File: WTR CALC.215882

Page 1

03-17-88Rev

U.S.B.R. Indian Water Transfer

Water Calculations

The purpose is to determine the effect of reducing project acreage by 0 ac. - 3,000 ac & water allocation by 22,000 af. using application rate of 5.79.

Acreage Reduction	0	0	1,000	1,500	2,000	2,500	3,000
Project Irrigable Acreage	65,000	65,000	64,000	63,500	63,000	62,500	62,000
Ratio of Irrigated/Irrigable	.93494	.93494	.93494	.93494	.93494	.93494	.93494
Irrigated Acreage (w/o surplus) 2/	60,771	60,771	59,836	59,369	58,901	58,434	57,966
Application Rate af/ac/yr 1/	5.79	5.79	5.79	5.79	5.79	5.79	5.79
Total Water Req'd at Field	351,864	351,864	346,451	343,744	341,038	338,331	335,624
Total Plus 5000 af M&I	356,864	356,864	351,451	348,744	346,038	343,331	340,624
	.142	.142	.142	.142	.142	.142	.142
Delivery Loss from Imp. Dam 14.2%	50,675	50,675	49,906	49,522	49,137	48,753	48,369
Req'd Diversion at Imp. Dam	407,539	407,539	401,357	398,266	395,175	392,084	388,993
Reduced Allocation	0	22,000	22,000	22,000	22,000	22,000	22,000
Water Allocation	300,000	278,000	278,000	278,000	278,000	278,000	278,000
Req'd Return Flow	107,539	129,539	123,357	120,266	117,175	114,084	110,993
Authorized Return Flow	115,840	115,840	115,840	115,840	115,840	115,840	115,840
Difference	8,301	(13,699)	(7,517)	(4,426)	(1,335)	1,756	4,847
Rtn Flow Rate cfs	148.5	178.9	170.4	166.1	161.9	157.6	153.3

1/ 1982-87 Excluding 1983

2/ 1982/87 Acreage Average 60,771
w/o surplus

5.79 af/ac/yr

EXHIBIT NO. 8

File: WTR CALC.215883

Page 1

03-17-88Rev

U.S.B.R. Indian Water Transfer

Water Calculations

The purpose is to determine the effect of reducing project acreage by 0 ac. - 3,000 ac & water allocation by 22,000 af. using a variable application rate to demonstrate sensitivity to application rate.

Acreage Reduction	0	2,000	2,000	2,000	2,000	2,000	2,000
Project Irrigable Acreage	65,000	63,000	63,000	63,000	63,000	63,000	63,000
Ratio of Irrigated/Irrigable	.93494	.93494	.93494	.93494	.93494	.93494	.93494
Irrigated Acreage (w/o surplus) 2/	60,771	58,901	58,901	58,901	58,901	58,901	58,901
Application Rate af/ac/yr 1/	5.79	5.74	5.75	5.76	5.77	5.78	5.79
Total Water Req'd at Field	351,864	338,092	338,681	339,270	339,859	340,448	341,038
Total Plus 5000 af M&I	356,864	343,092	343,681	344,270	344,859	345,448	346,038
	.142	.142	.142	.142	.142	.142	.142
Delivery Loss from Imp. Dam 14.2%	50,675	48,719	48,803	48,886	48,970	49,054	49,137
Req'd Diversion at Imp. Dam	407,539	391,812	392,484	393,157	393,830	394,502	395,175
Reduced Allocation	0	22,000	22,000	22,000	22,000	22,000	22,000
Water Allocation	300,000	278,000	278,000	278,000	278,000	278,000	278,000
Req'd Return Flow	107,539	113,812	114,484	115,157	115,830	116,502	117,175
Authorized Return Flow	115,840	115,840	115,840	115,840	115,840	115,840	115,840
Difference	8,301	2,028	1,356	683	10	(662)	(1,335)
Rtn Flow Rate cfs	148.5	157.2	158.1	159.1	160.0	160.9	161.9

1/ 1982-87 Excluding 1983

2/ 1982/87 Acreage Average 60,771
w/o surplus

5.79 af/ac/yr

EXHIBIT NO. 9

File: WTR CALC.21588

Page 1

03-17-88Rev

U.S.B.R. Indian Water Transfer

Water Calculations

The purpose is to determine the effect of reducing project acreage by 0 ac. - 3,000 ac & water allocation by 22,000 af. using application rate of 5.66.

Acreage Reduction	0	0	1,000	1,500	2,000	2,500	3,000
Project Irrigable Acreage	65,000	65,000	64,000	63,500	63,000	62,500	62,000
Ratio of Irrigated/Irrigable	.93494	.93494	.93494	.93494	.93494	.93494	.93494
Irrigated Acreage (w/o surplus) 2/	60,771	60,771	59,836	59,369	58,901	58,434	57,966
Application Rate af/ac/yr 1/	5.66	5.66	5.66	5.66	5.66	5.66	5.66
Total Water Req'd at Field	343,964	343,964	338,672	336,026	333,380	330,734	328,089
Total Plus 5000 af M&I	348,964	348,964	343,672	341,026	338,380	335,734	333,089
Delivery Loss from Imp. Dam 14.2%	.142	.142	.142	.142	.142	.142	.142
	49,553	49,553	48,801	48,426	48,050	47,674	47,299
Req'd Diversion at Imp. Dam	398,517	398,517	392,474	389,452	386,430	383,409	380,387
Reduced Allocation	0	22,000	22,000	22,000	22,000	22,000	22,000
Water Allocation	300,000	278,000	278,000	278,000	278,000	278,000	278,000
Req'd Return Flow	98,517	120,517	114,474	111,452	108,430	105,409	102,387
Authorized Return Flow	115,840	115,840	115,840	115,840	115,840	115,840	115,840
Difference	17,323	(4,677)	1,366	4,388	7,410	10,431	13,453
Rtn Flow Rate cfs	136.1	166.5	158.1	153.9	149.8	145.6	141.4

1/ 5.66 af/ac/yr Anticipated application rate with reduction of 2,000 acres of high water use lands.

2/ 1982/87 Acreage Average 60,771
w/o surplus

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
WATER RIGHTS SETTLEMENT AGREEMENT

PHOENIX, ARIZONA
FEBRUARY 1988

Agreement

THIS AGREEMENT, dated as of ___________, 1988, is entered into among the United States of America; the State of Arizona; the Salt River Pima-Maricopa Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert; and the Central Arizona Water Conservation District.

TABLE OF CONTENTS

PARAGRAPH — PAGE

1.0 RECITALS . . . 5
2.0 DEFINITIONS . . . 7
3.0 STIPULATIONS AND AGREEMENTS . . . 10
4.0 ANNUAL WATER DUTY, CONSUMPTIVE USE, AND EXPECTED GROUNDWATER RECHARGE . . . 12
5.0 TOTAL WATER REQUIREMENT AND LIMITATION . . . 12
6.0 SOURCES OF WATER . . . 13
7.0 KENT DECREE WATER . . . 14
8.0 ADDITIONAL STORED WATER . . . 17
9.0 BARTLETT DAM WATER . . . 21
10.0 RWCD RIGHTS AND WATER TRANSFER TO SRPMIC . . . 22
11.0 RID CONTRACT ENTITLEMENT, RID-PHOENIX-SRP EXCHANGE, AND WATER TRANSFER TO SRPMIC . . . 28
12.0 CITIES' RIVER WATER EXCHANGE . . . 31
13.0 GROUNDWATER . . . 36

PARAGRAPH PAGE

14.0 SPILL WATER 36

15.0 OPERATION AND MAINTENANCE OF SRPMIC DELIVERY SYSTEM 37

16.0 LIMITATIONS ON TRANSPORTATION AND USE OF SRP WATER 40

17.0 SRPMIC WAIVER OF CLAIMS 40

18.0 RECHARGE ARRANGEMENTS 43

19.0 CAP WATER LEASE 43

20.0 COST SHARING RESPONSIBILITIES 45

21.0 OTHER PROVISIONS 49

EXHIBITS

Paragraph 2.0

"2.16" Map of SRPMIC Reservation 63

Paragraph 3.0

"3.a" Salt River Pima-Maricopa Indian Community v. United States of America, et al., CIV 82-745 PHX RGS . 64

"3.b" Salt River Pima-Maricopa Indian Community v. H.S. Aguilar, et al., CIV 82-2162-PHX PGR . . . 68

"3.c" United States of America on behalf of Salt River Pima-Maricopa Indian Community, et al. v. City of Phoenix, et al., CIV 82-2173-PHX WPC . . . 73

"3.d" Town of Gilbert v. The Roosevelt Water Conservation District, et al., CIV 85-2600-PHX CAM . . . 75

"3.e" Gila River Adjudication 87

"3.f" Herman Grey, et al. v. United States of America, Docket No. 588-84L, United States Claims Court . 111

"3.g" Salt River Pima-Maricopa Indian Community v. Salt River Valley Water Users' Association, et al., No. CIV 83-2500 PHX WPC 113

. . .

EXHIBITS PAGE

"3.h.1" River Water Exchange Contract - City of Chandler, Arizona 115
"3.h.2" River Water Exchange Contract - City of Glendale, Arizona 142
"3.h.3" River Water Exchange Contract - City of Scottsdale, Arizona 169
"3.h.4" River Water Exchange Contract - City of Tempe, Arizona 196
"3.h.5" River Water Exchange Contract - City of Mesa, Arizona 223
"3.h.6" River Water Exchange Contract - City of Phoenix, Arizona 250
"3.h.7" River Water Exchange Contract - Town of Gilbert, Arizona 277
"3.i" RWCD CAP Water Service Subcontract Amendment and Superior Court Decree Validating Subcontract . 304
"3.j" SRPMIC CAP Water Delivery Contract Amendment . . 308
"3.k" RID, City of Phoenix, SRPMIC and SRP Water Exchange Agreement 313
"3.l.1" Plan 6 Agreement Approval - City of Tucson . . 352
"3.l.2" Plan 6 Agreement Approval - Flood Control District of Maricopa County 355
"3.m" City of Phoenix - SRPMIC Project Water Lease Agreement 358
"3.n" SRP-RWCD Extension Agreement 366
"3.o.1" Waiver and Release of Claims - SRPMIC . . . 371
"3.o.2" Waiver and Release of Claims - Allottees . . 374
"3.p" Amendment to Bartlett Dam Agreement . . . 377

Paragraph 8.0

"8.1" Additional Stored Water 382

EXHIBITS PAGE

Paragraph 10.0

"10.2" RWCD Credit Lands 384

"10.3" Map Showing RWCD boundaries, and City CAP planning areas 386

Paragraph 21.0

"21.6" Salt River Pima-Maricopa Indian Community Water Rights Settlement Act 388

"21.7" 1977 Water Commissioner's Report 403

. . .

1.0 RECITALS

1.1 The continued development of the Salt River Valley, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by the assertion of substantial water right claims based upon Federal, State and other law. These include claims by the Salt River Pima-Maricopa Indian Community and its members to a Tribal homeland water right sufficient to irrigate approximately 27,200 acres on the Salt River Pima-Maricopa Indian Community's Reservation east of Scottsdale. In addition, the validity of certain non-Indian claims to water and the liability of the United States and other water users to the Salt River Pima-Maricopa Indian Community have been raised. These issues are the subject of extensive and complex litigation pending in the Arizona State and Federal courts.

1.2 It is recognized by all parties to this Agreement that the resolution of these conflicts must recognize long-standing vested water rights arising under State law, the Kent Decree, and through contractual relationships with the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and the United States. Settlement of these issues must also accommodate the imperative need of the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Town of Gilbert to satisfy increasing municipal and industrial ("M&I") water demands.

1.3 The representatives of the United States of America, the State of Arizona, the Salt River Pima-Maricopa Indian Community, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power

183

District, the Roosevelt Water Conservation District, the Roosevelt Irrigation District, the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Town of Gilbert, Arizona, and the Central Arizona Water Conservation District have agreed to permanently settle the water rights of the Salt River Pima-Maricopa Indian Community and its members, to finally resolve pending litigation on water rights and damage claims, and to seek funding for implementation of the settlement.

1.4 The United States acting through the Secretary of the Interior has both a trust and fiduciary responsibility to make the Salt River Pima-Maricopa Indian Community's Reservation a permanent Tribal homeland for the Salt River Pima-Maricopa Indian Community.

1.5 The objective of this settlement is to resolve all outstanding water-related litigation and to settle, once and for always, the water rights of the Salt River Pima-Maricopa Indian Community, its members, and the owners of allotted lands within the Salt River Pima-Maricopa Indian Community's Reservation based upon Federal, State and other laws by providing to the Salt River Pima-Maricopa Indian Community sufficient water from various sources to irrigate 27,200 acres of agricultural land within the Salt River Pima-Maricopa Indian Community's Reservation, 14,500 acres of which are located south of the Arizona Canal and within the exterior boundaries of the Salt River Reservoir District and 12,700 acres of which are located north of the Arizona Canal and outside the exterior boundaries of the Salt River Reservoir District.

. . .

. . .

184

NOW, THEREFORE, in consideration of the premises and of the promises and agreements hereinafter set forth, the parties hereto agree as follows:

2.0 DEFINITIONS

This Agreement will employ abbreviated terms which will have the meanings stated below.

2.1 "Additional Active Conservation Capacity" shall mean the difference between the Existing Active Conservation Capacity in Roosevelt Reservoir prior to modification of Roosevelt Dam and the Active Conservation Capacity after modification of Roosevelt Dam; "Active Conservation Capacity" shall mean the reservoir capacity assigned to regulate reservoir outflow for irrigation, power and M&I use. The modifications referred to in this definition are the modifications made as a part of the CAP.

2.2 "Allottees" shall mean owners of allotted land within the Salt River Pima-Maricopa Indian Community Reservation.

2.3 "Bartlett Dam Agreement" shall mean the agreement between the United States and the Salt River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

2.4 "CAP" shall mean the Central Arizona Project, a Reclamation project constructed by the United States of America pursuant to the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885.

. . .

2.5 "CAWCD" shall mean the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the Contractor under a contract with the United States of America, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

2.6 "Effluent" shall mean water which, after being withdrawn as groundwater or diverted as surface water, has been used for domestic, municipal or industrial purposes and which is available for reuse for any purpose, whether or not the water has been treated to improve its quality.

2.7 "Gila River Adjudication" shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled as IN RE the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro).

2.8 "Kent Decree" shall mean the decree dated March 10, 1910, entered in Patrick T. Hurley v. Charles F. Abbott, et al., Cause No. 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

2.9 "Plan 6" shall mean Plan 6 for the Regulatory Storage Division of the CAP which for the purposes of this Agreement is limited to modifications to Roosevelt Dam on the Salt River.

2.10 "Plan 6 Agreement" shall mean the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; the Salt River Project;

the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated on April 15, 1986, together with Exhibits A, B, C and D thereto.

2.11 "RID" shall mean the Roosevelt Irrigation District, an irrigation district organized under the laws of the State of Arizona.

2.12 "RWCD" shall mean the Roosevelt Water Conservation District, a water conservation district organized under the laws of the State of Arizona.

2.13 "Secretary" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

2.14 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.15 "SRPMIC" shall mean the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, and duly recognized by the Secretary.

2.16 "SRPMIC Reservation" shall mean that area of land generally shown on the map attached as Exhibit "2.16" to this Agreement.

. . .

2.17 "SRRD" shall mean the Salt River Reservoir District as defined, on the effective date of this Agreement, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

3.0 STIPULATIONS AND AGREEMENTS

This Agreement includes additional and subsidiary agreements in the form of contracts, stipulations for settlement of litigation and the entry of consent decrees and waivers of claims as exhibits which are attached and incorporated herein and are described as follows:

(a) Salt River Pima-Maricopa Indian Community v. United States, et al., CIV 82-745 PHX RGS, United States District Court for the District of Arizona: Stipulation for Dismissal with Prejudice and Order of Dismissal with Prejudice (Exhibit "3.a");

(b) Salt River Pima-Maricopa Indian Community v. H.S. Aguilar, et al., CIV 82-2162 PHX PGR, United States District Court for the District of Arizona: Notice of Dismissal with Prejudice and Motion and Notice for Order of Dismissal and Order of Dismissal with Prejudice (Exhibit "3.b");

(c) United States of America on behalf of Salt River Pima-Maricopa Indian Community, et al. v. City of Phoenix, et al., CIV 82-2173-PHX WPC: Notice of Dismissal with Prejudice (Exhibit "3.c");

(d) Town of Gilbert v. The Roosevelt Water Conservation District, et al., CIV 85-2600-PHX CAM: Stipulation and Joint Motion for Joinder of Additional Parties Plaintiff, Waiver of Amended Complaint and Time Within Which to Answer, Incorporation of Prior Answers to the Complaint and Order; Order; Stipulation for Dismissal with Prejudice; and Order of Dismissal (Exhibit "3.d");

(e) Gila River Adjudication: Stipulation and Judgment (Exhibit "3.e");

(f) Herman Grey, et al. v. United States of America, Docket No. 588-84L, United States Claims Court: Notice of Settlement and Stipulation of Dismissal with Prejudice (Exhibit "3.f");

(g) Salt River Pima-Maricopa Indian Community v. Salt River Valley Water Users' Association, et al., No. CIV 83-2500 PHX WPC: Stipulation for Dismissal of Appeal (Exhibit "3.g.");

(h) City river water exchange contracts with the Secretary for delivery of water as provided in Paragraph 12.2 hereof (Exhibits "3.h.1 through 3.h.7");

(i) Amendment of RWCD CAP agricultural water service sub-contract, and Superior Court decree validating such agricultural water service subcontract (Exhibit "3.i");

(j) Amendment of SRPMIC CAP water delivery contract to effectuate lease of water pursuant to Paragraph 19.0 hereof (Exhibit "3.j");

(k) RID, City of Phoenix, SRP and SRPMIC Water Exchange Agreement pursuant to Paragraph 11.0 hereof (Exhibit "3.k");

(l) Approvals of storage and funding related to Plan 6 pursuant to Paragraph 7.0 hereof (Exhibits "3.1.1" and "3.1.2");

(m) City of Phoenix - SRPMIC CAP water lease agreement pursuant to Paragraph 19.0 hereof (Exhibit "3.m.");

(n) SRP-RWCD extension agreement (Exhibit "3.n");

(o) Waivers and releases of claims pursuant to Paragraph 17.0 hereof (Exhibits "3.o.1" through "3.o.2");

(p) Amendment to Bartlett Dam Agreement pursuant to Paragraph 9.0 hereof (Exhibit "3.p."); and

. . .

. . .

4.0 ANNUAL WATER DUTY, CONSUMPTIVE USE, AND EXPECTED GROUNDWATER RECHARGE

The SRPMIC Reservation land to be irrigated with the water provided by this Agreement will be served with new, modern delivery facilities. Accordingly, a reduced water duty of 4.5 acre-feet per acre per year will be used for purposes of this Agreement. For purposes of calculating the safe yield groundwater withdrawal, the crop consumptive use will be 3.1 acre-feet per acre per year, and approximately 0.2 acre-feet per acre per year is assumed to be lost to future use by unrecoverable percolation. The safe yield groundwater withdrawal resulting from agricultural recharge is set at 1.2 acre-feet per acre per year or 32,640 acre-feet per year when full agricultural development occurs, and will remain fixed for the term of this Agreement.

5.0 TOTAL WATER REQUIREMENT AND LIMITATION

Utilizing a water duty of 4.5 acre-feet per acre per year for the 14,500 acres located within the exterior boundaries of the SRRD and for the 12,700 acres located north of the Arizona Canal, the annual water delivery requirement to SRPMIC measured at the turnouts from the CAP Granite Reef Aqueduct, turnouts from SRP main canals, and pump outlets from groundwater wells on the SRPMIC Reservation will be 65,250 acre-feet per year for the SRPMIC Reservation lands within the exterior boundaries of the SRRD and 57,150 acre-feet per year for the SRPMIC Reservation lands north of the Arizona Canal. With the exception of "Spill Water" described in Paragraph 14.0 hereof, the SRPMIC total annual water deliveries from all sources, including groundwater, shall be limited to 65,250 acre-feet south of the Arizona Canal and 57,150 acre-feet north of the Arizona Canal.

. . .

6.0 SOURCES OF WATER

Water for the settlement will be provided from the sources and in the quantities outlined in Tables 6.1 and 6.2 hereof and defined in Paragraphs 7.0, 8.0, 9.0, 10.0, 11.0, 12.0 and 13.0 hereof.

6.1 For irrigation or other use on 14,500 acres of SRPMIC Reservation lands located south of the Arizona Canal and within the exterior boundaries of the SRRD:

Source	Estimated Quantity (AF/yr)	Reference Paragraph
Kent Decree water	18,776	7.0
Stored water from SRP	9,074	8.0
Cities' river water exchange	20,000	12.0
Groundwater pumped by SRPMIC (long term average)	17,400	13.0
Sub-Total	65,250	

6.2 For irrigation or other use on SRPMIC Reservation lands located north or south of the Arizona Canal:

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

Source	Estimated Quantity (AF/yr)	Reference Paragraph
CAP contractual entitlement	13,300	
Bartlett Dam Agreement water	20,000	9.0
RWCD	8,000	10.0
RID, City of Phoenix, SRP exchange water	10,000	11.0
Groundwater pumped by SRPMIC (long term average)	5,850	13.0
Sub-Total	57,150	
TOTAL	122,400	

6.3 Effluent developed on the SRPMIC Reservation shall be used for such purposes as SRPMIC may determine and shall not be included in the quantity restriction of this Agreement.

7.0 KENT DECREE WATER

7.1 Historically SRPMIC has used only a part of its Kent Decree entitlement due to demand being less than available supply during parts of the year. In order that SRPMIC may use more fully its Kent Decree water entitlement, the United States will designate for use by SRPMIC for storage of Kent Decree water 7,000 acre-feet (hereinafter "Designated Space") of the Additional Active Conservation Capacity. The SRPMIC will be assessed evaporation losses using the same formula as other Plan 6 municipal participants as provided in Paragraph 5.26(b) of Exhibit "C" of the Plan 6 Agreement. In order to assure that Additional Active Conservation Capacity is available to SRPMIC, the Secretary agrees that each annual budget estimate submitted to the Executive Office of the President of the United States by the Department of the Interior shall include sufficient funding, in accordance with the Plan 6 Agreement as amended or modified. SRPMIC agrees to support the authorization for funding and modification of Roosevelt Dam as an integral part of the Plan 6 facilities.

7.2 The Designated Space will be for seasonal re-regulation only (no annual carry over past October 1) and will be made available to accomplish other Plan 6 purposes when not needed to re-regulate SRPMIC's Kent Decree entitlement. No part of the Plan 6 or SRP water supply will accrue to the United States or the SRPMIC under this Paragraph 7.0. Subject to grant of authority by the Congress to make costs of the Designated Space non-reimburseable, the United States will forgive a portion of the non-Federal funding obligation associated with the Designated Space. The amount of the costs so forgiven will be the ratio of number of acre-feet of Designated Space to the Additional Active Conservation Capacity multiplied by the amount the cities have agreed to contribute for that capacity under the Plan 6 Agreement.

7.3 Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, the United States, CAWCD, and SRP will cooperate with SRPMIC in obtaining any necessary State or Federal approval for joint use of the Designated Space or existing temporary space in SRP reservoirs consistent with this Paragraph 7.0. All parties to this Agreement shall refrain from initiating or supporting any legislative, administrative, or judicial proceeding challenging Plan 6. The Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, the United States, CAWCD, and SRP agree that to the extent the provisions of Paragraph 7.1, 7.2, and 7.3 hereof are contrary to the provisions of the Plan 6 Agreement, Paragraphs 7.1 through 7.3 hereof shall control.

7.4 SRP will provide temporary storage for the 7,000 acre-feet referred to in Paragraph 7.1 hereof in its existing reservoirs on the Salt River for SRPMIC Kent Decree water until the earlier of:

(a) the construction of Additional Active Conservation Capacity is completed;

(b) a declaration is made by the United States that such Capacity will not be constructed; or

(c) December 31, 2005;

Provided, however, that this temporary storage entitlement shall always be subject to spill as provided in Paragraph 21.9 hereof and that evaporation will be charged monthly at the rate of one-half of one percent of the Kent Decree stored water balance at the end of each month. The temporary storage will be for seasonal reregulation only (no annual carry over past October 1).

7.5 In the event of the occurrence of either condition described in Paragraph 7.4(b) or 7.4(c) hereof, and to satisfy the requirements of Paragraph 7.1 hereof, the United States will provide water from sources other than the Salt or Verde Rivers at no cost or expense to SRPMIC amd at no cost or expense to the Plan 6 participants.

7.6 The Kent Decree water will be used only on SRPMIC Reservation lands south of the Arizona Canal and inside the exterior boundary of the SRRD.

. . .

8.0 ADDITIONAL STORED WATER

8.1 "Stored Water" is defined as that amount of water delivered to SRPMIC by SRP from SRP reservoirs up to 9,074 acre-feet per year pursuant to Paragraphs 6.1 and 8.2 hereof.

"Additional Stored Water" is defined as that amount of SRP water delivered to SRPMIC by SRP from SRP reservoirs in excess of 9,074 acre-feet per year pursuant to Paragraphs 8.3 through 8.8 hereof.

"Net SRP Reservoir Storage" on Exhibit "8.1" to this Agreement is defined as (a) water actually stored in SRP reservoirs (existing as of the date of this Agreement) on May 1st of each year less water stored for SRPMIC, the Fort McDowell Mohave-Apache Indian Community, RWCD, Phelps Dodge Corporation, City of Phoenix, Buckeye Irrigation District and storage related to Plan 6; and (b) the sum of surface water released from existing SRP reservoirs during the 12 months preceding May 1 which is (i) diverted by SRP under SRP's rights as determined in the Gila River Adjudication for use on lands not receiving such waters prior to the date of this Agreement, (ii) contract deliveries, other than those permitted pursuant to the Plan 6 Agreement, this Agreement, or the Fort McDowell Indian Community Settlement Agreement, by SRP outside the boundaries of the SRRD in excess of the maximum deliveries required under current contract arrangements with SRP as of the date of this Agreement; and (iii) water, other than Spill Water as defined in Paragraph 14.0 hereof, diverted from existing SRP conservation space for first use for a groundwater recharge or storage facility operated pursuant to permits for those purposes under State law, in excess of replacement of that water in the SRP reservoirs. Deliveries of surface water from the Salt and Verde Rivers to the Gila River Indian

Community by SRP during the 12 months preceding May 1, pursuant to a written settlement agreement, may be used by SRPMIC to increase the level of SRP Net Reservoir Storage on May 1 to a maximum level of 1.5 million acre-feet. Net SRP Reservoir Storage will not exceed SRP's rights for SRP storage facilities existing as of the date of this Agreement as determined in the Gila River Adjudication.

Stored Water and Additional Stored Water will be used only on SRPMIC Reservation lands south of the Arizona Canal within the exterior boundaries of SRRD.

8.2 SRP will deliver annually 9,074 acre-feet of Stored Water to SRPMIC at the Arizona Canal or South Canal as ordered by SRPMIC. If SRPMIC elects the alternative provision described in Paragraph 8.3 hereof, this Paragraph 8.2 shall be of no effect.

8.3 As an alternative to the annual delivery described in Paragraph 8.2 hereof, SRPMIC will be delivered annually Stored Water from 0 to 9,074 acre-feet at Net SRP Reservoir Storage levels on May 1 of 350,000 to 1.5 million acre-feet in accordance with Exhibit "8.1" hereof. At Net SRP Reservoir Storage levels above 1.5 million acre-feet on May 1, SRPMIC shall be entitled to receive Additional Stored Water in accordance with Exhibit "8.1" hereof and conditioned as provided in Paragraphs 8.4 through 8.8 hereof. Maximum demands on SRP by SRPMIC for Stored Water will be no more than 658 acre-feet in 1987 and will increase on a straight line basis to 9,074 acre-feet by the year 2000. The first delivery of such water will be made, on the order of SRPMIC, during the calendar year in which this Agreement becomes enforceable, and shall be of an amount that reflects the phase-in of entitlement under this Paragraph 8.3. The water year under this Paragraph 8.0 shall be May 1 to the following April 30. SRPMIC shall permanently choose in writing between the two alternatives set forth in Paragraphs 8.2 and 8.3 hereof within one year of the execution of this Agreement by SRPMIC.

8.4 As conditions to receiving Additional Stored Water SRPMIC shall:

8.4.1 Establish by May 1 of each year that it will reduce groundwater pumping on its lands south of the Arizona Canal and within the exterior boundaries of the SRRD to not more than 17,400 acre-feet on an annualized basis from May 1 of that year to April 30 of the next year and that it shall thereafter further reduce its actual groundwater pumping on the SRPMIC Reservation by one acre-foot for each acre-foot of Additional Stored Water it receives from SRP.

8.4.2 Designate on or before May 1 of each year the specifically described acres within the SRPMIC Reservation which will actually be served during the subsequent 12 months with water from all sources. The designation shall be in the form of a map depicting the acres, the projected source of irrigation water for those acres, and a tabulation distinguishing acres north and south of the Arizona Canal. The designation shall be certified by a resolution of the SRPMIC Council which will further certify that SRPMIC groundwater pumping for the designated acres will be reduced by one acre-foot for each acre-foot of Additional Stored Water it receives.

. . .

8.4.3 Maintain measuring devices which will permit SRP to verify the acre-feet of groundwater pumped and surface water received by SRPMIC during the previous May 1 to April 30 period and will provide this data to SRP as a part of the certifying resolution of its Council.

8.5 The allocation of Additional Stored Water which may be received by SRPMIC from SRP for the 12-month period May 1 to April 30 of each year will be the lesser of:

(a) the amount of Additional Stored Water derived from Net SRP Reservoir Storage as provided in Paragraph 8.3 hereof; or,

(b) the irrigation water demand which cannot be satisfied by using all surface water sources identified in Paragraphs 6.1 and 6.2 hereof, except for SRPMIC CAP water, for which groundwater would be pumped to satisfy that demand if Additional Stored Water were not available. Demand is defined as designated acres, as provided in Paragraph 8.4.2 hereof, multiplied by 4.5 acre-feet per acre.

8.6 In the event that the amount of groundwater pumped on the SRPMIC Reservation exceeds the reduction required by this Paragraph 8.0 or the acres designated by SRPMIC are not actually served with irrigation water, the next future Additional Stored Water allocations provided to SRPMIC under Paragraph 8.3 hereof will be reduced by a like amount. Failure by SRPMIC to designate the acres pursuant to Paragraph 8.4 hereof and to provide the SRPMIC Council resolution to SRP by May 1 of any year shall relieve SRP of any obligation to provide SRPMIC with Additional Stored Water for the next 12 month period.

. . .

8.7 In the event SRPMIC constructs water treatment plants on the SRPMIC Reservation capable of treating surface water for municipal and industrial (M&I) delivery within the SRRD on the SRPMIC Reservation, the acre-foot for acre-foot reduction of groundwater use in exchange for Additional Stored Water as provided in Paragraphs 8.3 and 8.4.1 hereof may result from reduced groundwater pumping for M&I use on the SRPMIC Reservation, rather than from reduced pumping for agricultural irrigation. The limits set forth in Paragraph 8.5 hereof on total Additional Stored Water available to the SRPMIC shall not be affected by a change in groundwater use within the SRPMIC Reservation from agricultural irrigation to M&I uses.

8.8 For the purposes of this Agreement, "Additional Allotment" as described on Exhibit "8.1" hereof at any given Net SRP Reservoir Storage amount will be multiplied by 11,042 acres to determine the Stored Water and Additional Stored Water available to SRPMIC subject to the above provisions.

9.0 BARTLETT DAM WATER

9.1 The Bartlett Dam Agreement shall be amended to provide that SRP shall increase the total SRPMIC allotment of developed water under the Bartlett Dam Agreement to 20,000 acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

9.1.1 For at least 292 days of the calendar year the total water stored in SRP reservoirs on the Verde River is more than the storage capacity of Bartlett . . .

Dam Reservoir, which is, for purposes of this Agreement, deemed to be 178,186 acre-feet, as periodically adjusted by SRP for silt losses;

9.1.2 The total SRPMIC allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than 7,000 acre-feet;

9.1.3 The total SRPMIC allotment of developed water under the Bartlett Dam Agreement existing at the beginning of the calendar year plus the SRPMIC allotment of developed water generated during that calendar year is less than 20,000 acre-feet.

9.2 Except as provided in Paragraph 9.1 hereof, all terms and conditions of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

9.3 SRP shall provide monthly reports to SRPMIC showing the balance of SRPMIC's allotment of developed water as of the end of each month.

10.0 RWCD RIGHTS AND WATER TRANSFER TO SRPMIC

10.1 The parties to this Agreement recognize and confirm the entitlement of RWCD to surface water from the Salt and Verde Rivers and agree not to object to, dispute or challenge, in the Gila River Adjudication, or otherwise, such rights, which rights are evidenced by, described, stated, confirmed or established in the following documents and instruments: the agreement between SRP and RWCD dated October 24, 1924, and approved by the Secretary on December 2, 1924; the stipulation dated September 18, 1940, the decision dated on or about

September 18, 1940, the judgment dated September 19, 1940, and the order dated September 19, 1940, in W.C. Lehane v. Salt River Valley Water Users' Association, et al., Cause No. 32021-C in the Superior Court of Maricopa County, Arizona; and the agreement between SRP and RWCD dated September 9, 1954.

10.2 The parties to this Agreement recognize and confirm that the measure of RWCD's surface water entitlement under the documents and instruments identified in Paragraph 10.1 hereof is five and six-tenths percent (5.6%) of the sum of all surface water, except Spill Water, diverted at Granite Reef Dam or other points on the Salt and Verde Rivers (a) for use on the lands within the SRRD described in Exhibit "10.2" to this Agreement, (b) for distribution by Glendale, Mesa, Phoenix and Tempe, or other cities, or their successors, to the lands within the SRRD listed on Exhibit "10.2" to this Agreement, and (c) all surface water delivered to SRP below Granite Reef Dam for use on the lands within the SRRD listed on Exhibit "10.2" to this Agreement in exchange for surface water which otherwise would have been diverted at Granite Reef Dam; minus the first 19,427 acre-feet of surface water delivered by SRP each year to the City of Phoenix domestic water treatment plants. Except as provided in this Paragraph 10.2, all rights and obligations contained in the documents and instruments referred to in Paragraph 10.1 hereof shall remain in full force and effect. RWCD's entitlement as set forth in this paragraph shall not include any yield from Additional Active Conservation Capacity.

10.3 RWCD has executed a CAP agricultural water service subcontract which provides for the conversion of CAP agricultural water to CAP M&I water under circumstances stated in the subcontract. The parties agree that this right of conversion shall not be exercised within the areas jointly within RWCD and the CAP planning areas of Chandler, Gilbert and Mesa, as used by the Arizona Department of Water Resources ("DWR") in recommending to the Secretary the initial M&I water allocations to those Cities. A map for Chandler, Mesa, and Gilbert depicting each such CAP planning area is attached to this Agreement as Exhibit "10.3." Provided, however, such conversion right may be exercised within such CAP planning area at any time or times after it is determined that any portion of surface water appurtenant to the land within such CAP planning area is permanently unavailable for use on such land, to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per acre minus (A plus B).

A = the average amount of surface water (after the permanent unavailability of surface water has been determined pursuant to RWCD's agricultural water service subcontract) actually available to each of RWCD's eligible acres not including Spill Water and surface water RWCD has agreed to contribute to this Settlement (expressed in acre-feet per acre).

B* = the amount of CAP M&I water available to an RWCD eligible acre by virtue of the initial M&I allocations to Chandler, Gilbert, or Mesa, plus the amount of permanently available replacement surface water per acre, if any, received by Chandler, Gilbert or Mesa from any water settlement involving the Fort McDowell Indian Community ("FMIC"). B = C/D (expressed in acre-feet per acre).

C = the initial CAP M&I allocation for the applicable city or town, plus the amount of permanently available replacement surface water, if any, received by Chandler, Gilbert or Mesa from any water settlement involving FMIC (expressed in acre-feet).

D = the number of acres within the CAP planning area used by DWR in recommending to the Secretary the initial M&I allocation to the applicable city or town (expressed in acres).

*Note: B must be determined with reference to the allocation of the city or town associated with the planning area wherein conversion is proposed to occur. B will not be the same number for each acre within RWCD.

For the purpose of the foregoing formula, "permanently available" shall mean the availability of such replacement surface water for a term of years or an extended term of years of substantially the same length as the term of the lease described in Paragraph 19.0 hereof.

The parties agree that with respect to that area within the boundaries of RWCD but outside of the CAP planning areas used by DWR in recommending to the Secretary the initial M&I allocations for Chandler, Gilbert, and Mesa, which area is shown on Exhibit "10.3" hereto, CAP agricultural water may be converted to CAP M&I use to the extent permitted by the following formula:

For a given acre, conversion = 1 acre-foot per acre minus A (as defined above)

By the execution of this Agreement, the Secretary hereby approves and authorizes all such conversions, to be effective at such time or times as the conditions of this Agreement and Addendum A of the RWCD CAP agricultural water service subcontract, as modified by this Agreement, are fulfilled. The Secretary's execution of this Agreement shall constitute a present exercise of all discretion vested in him by Section 304(b)(2) of the Colorado River Basin Project Act, 82 Stat. 892, in the CAP master repayment contract dated December 15, 1972, between the United States and CAWCD, and in RWCD's agricultural water service subcontract with respect to the making of CAP irrigation water available for M&I purposes.

10.4 The Cities of Chandler and Mesa hereby consent to become parties to that lawsuit styled as Town of Gilbert v. The Roosevelt Water Conservation District, et al., pending in United States District Court as Cause No. CIV-85-2600-PHX-CAM. The parties to this Agreement hereby approve the RWCD CAP agricultural water service subcontract, as modified by this Agreement; all parties to this Agreement who are also parties to Cause No. CIV-85-2600-PHX-CAM agree to execute the documents which constitute Exhibit "3.d" to this Agreement requiring their signature and to take all such steps as are necessary to cause Cause No. CIV-85-2600 PHX-CAM to be dismissed with prejudice.

10.5 During the term and extended term of the Agreements referred to in Paragraph 10.1 hereof, RWCD hereby directs SRP to deliver to SRPMIC 8,000 acre-feet per calendar year from RWCD's entitlement as defined in Paragraph 10.2 hereof. SRPMIC shall take delivery of its share of RWCD's entitlement in the period between January 1 and September 30 of each year. Subject to SRPMIC's maximum 8,000 acre-foot entitlement hereunder, SRPMIC shall be entitled to divert and use up to 1,700 acre-feet per month of RWCD's entitlement during such period, provided that water not diverted and used by SRPMIC in any month shall revert to RWCD. SRPMIC's entitlement under this Paragraph 10.5 shall not be carried over from month-to-month nor have storage rights for annual carryover.

In the event insufficient water is available under RWCD's entitlement to satisfy both the entitlement of SRPMIC under this Paragraph 10.5 and the entitlement of the FMIC under any settlement agreement to which RWCD and FMIC are parties, RWCD's entitlement shall be apportioned between SRPMIC and FMIC in such a manner that SRPMIC shall receive 71.4 percent of the water available under RWCD's entitlement and FMIC shall receive 28.6 percent of the water available under RWCD's entitlement.

RWCD, SRPMIC, and FMIC, at any time in which it reasonably appears to SRPMIC that the total amount of water to be available under RWCD's entitlement during the calendar year will be 11,200 acre-feet or less, shall meet and make arrangements to assure, to the maximum extent feasible, the delivery to SRPMIC and FMIC of their respective entitlements to water from RWCD. The foregoing sentence shall not be construed as creating any right for annual carryover.

10.6 RWCD's direction for the delivery of water to SRPMIC pursuant to the terms of Paragraph 10.5 hereof shall be binding upon its successors and assigns. The parties to this Agreement acknowledge that RWCD's water rights as described in the documents and instruments referred to in Paragraph 10.1 hereof are appropriative rights and are appurtenant to RWCD lands. Should any other entity succeed to RWCD's entitlement, it shall assume RWCD's rights and obligations to SRPMIC under Paragraph 10.5 hereof. RWCD and SRP agree that the term of the agreements described in Paragraph 10.1 hereof shall be extended by 50 years in accordance with the provisions of Exhibit "3.n" hereto. Nothing in this Agreement shall be construed as a grant of rights between SRP and RWCD for the use of SRP facilities to deliver RWCD's entitlement.

. . .

11.0 RID CONTRACT ENTITLEMENT, RID-PHOENIX-SRP EXCHANGE, AND WATER TRANSFER TO SRPMIC

11.1 The parties to this Agreement recognize and confirm the entitlement of RID pursuant to the agreement between SRP and Carrick and Mangham Agua Fria Lands and Irrigation Company (predecessor of RID) dated August 25, 1921, and approved by the Secretary on October 26, 1921; the agreement between SRP and RID dated February 3, 1927, and approved by the Secretary on February 12, 1927; and the agreement between SRP and RID dated May 31, 1950, and approved by the Secretary on October 9, 1950.

11.2 RID, the City of Phoenix, SRPMIC and SRP have entered into or will enter into an agreement, identified as Exhibit "3.k." hereof and incorporated herein by this reference, setting forth the respective interests, obligations and responsibilities of RID, the City of Phoenix, SRPMIC and SRP in and to the water exchange described herein as the "RID Exchange."

11.3 The SRP year end accounting for water deliveries to SRPMIC will exhaust the following accounts prior to any charge against RID Exchange credits:

(a) Kent Decree water;

(b) Stored Water and Additional Stored Water as provided in Paragraphs 8.2 and 8.3 hereof;

(c) Bartlett Dam water as provided in the Bartlett Dam Agreement as amended and supplemented by Paragraph 9.0 hereof;

(d) RWCD water as provided in Paragraph 10.5 hereof; and

. . .

(e) Cities' River Water Exchange water as provided in Paragraph 12.4 hereof;

Provided, however, that this commitment does not require that the five foregoing water credit accounts be drawn upon in the order listed or in any other particular order. SRP will charge SRPMIC credits in accordance with this Paragraph 11.3 annually, and on an interim monthly basis as necessary to implement Paragraphs 12.5 and 12.6 hereof.

11.4 There will be no charge to SRPMIC, except as provided in Paragraphs 15.1.c and 15.4 hereof, for RID Exchange water delivered to turnout points on the Arizona Canal or South Canal.

11.5 All parties to this Agreement agree that the RID Exchange is in the best interest of all parties to this Agreement, since it will facilitate the settlement of claims which all parties desire to have resolved. The affected parties recognize that certain aspects of the RID Exchange will require Federal, State or other governmental approvals before the exchange can be accomplished; therefore, the parties agree to support all applications for permits and approvals filed by the City of Phoenix, RID, SRP or SRPMIC regarding the exchange and agree to use their best efforts to expedite the review and approval of such permits. The State of Arizona specifically agrees that it will act upon any request for permit or approval requested by the City of Phoenix, RID, SRP or SRPMIC within the statutorily required time frame. If there is a requirement by State law for a hearing upon any request for approval or permit, the State agrees to devote sufficient staff and resources of the State to such hearing process, such that a hearing is completed in a reasonable time.

11.6 The parties agree that if the RID Exchange should become impossible to implement and perform due to the inability to obtain and maintain required Federal, State or other governmental approvals or for any other reason beyond the control of RID, the City of Phoenix, SRP or SRPMIC, then the rights and obligations of the parties set forth in Exhibit "3.k." hereof shall be void and of no force and effect. All other of the rights and obligations of the parties to this Agreement, including those set forth in Paragraph 11.1 hereof, shall remain in full force and effect.

11.7 It is expressly anticipated by the parties that this RID Exchange will gradually phase out as SRP shareholders' agricultural lands receiving the RID Exchange water are urbanized or upon expiration of RID's contractual relationship with SRP as described in Paragraph 11.1 hereof, whichever occurs first. SRPMIC water demand unfulfilled because of this phase-out or because of insufficient credits in the delivery account in any year will be satisfied, if necessary, by additional groundwater pumping by SRPMIC on its reservation.

11.8 In the event this RID Exchange fails for any reason to be implemented pursuant to the terms of this Agreement and a later exchange under essentially the same terms and conditions is negotiated between Phoenix, RID and SRP then SRPMIC shall have the right to participate in such exchange on essentially the same terms and conditions as set forth in this Paragraph 11.0; provided, however, SRPMIC's participation in such an agreement shall end on December 30, 2050.

. . .

. . .

12.0 CITIES' RIVER WATER EXCHANGE

12.1 The United States shall obtain 22,000 acre-feet of Colorado River water with a Colorado River priority pre-dating September 30, 1968, and which was not included in the determination of water supplies available to the CAP. The Secretary shall make this Colorado River water available for delivery as provided in Paragraphs 12.2 and 12.3 hereof. The parties agree that the water acquired by the Secretary pursuant to this Paragraph 12.1 will satisfy the water demands designated under Paragraph 12.2 hereof, because of its earlier priority.

12.2 The United States shall deliver Colorado River water through CAP facilities to the respective points of delivery in the following amounts:

(a) City of Chandler - 90 acre-feet per year;
(b) City of Glendale - 3,600 acre-feet per year;
(c) City of Scottsdale - 1,200 acre-feet per year;
(d) City of Tempe - 90 acre-feet per year;
(e) City of Mesa - 90 acre-feet per year;
(f) City of Phoenix - 19,840 acre-feet per year;
(g) Town of Gilbert - 90 acre-feet per year.

This Colorado River water will be delivered pursuant to contracts, perpetual in term, between the United States and the respective city or town ("City" or "Cities") attached hereto as Exhibits "3.h.1" through "3.h.7." For purposes of determining the allocation and repayment of CAP costs as provided in Section 9.3 of the CAP Master Repayment Contract dated December 15, 1972,

. . .

the Colorado River water delivered to the Cities pursuant to this Paragraph 12.2 shall be classified as water delivered to entities other than CAWCD and its contractors.

12.3 Except as provided in Paragraph 12.10 hereof concerning the CAP M&I water service capital charges, the Colorado River water contracted to the Cities pursuant to Paragraph 12.2 hereof will be made available to the Cities pursuant to contracts with the Secretary conforming to the Cities' existing CAP water service subcontracts. The priority of the water delivered pursuant to the contracts shall be equal to the priority given to CAP M&I water in the initial allocations published in the Federal Register dated March 24, 1983.

12.4 During the terms of the contracts referred to in Paragraph 12.2 hereof, SRP will deliver to SRPMIC, as provided in Paragraphs 12.5 through 12.9 hereof, up to 20,000 acre-feet of surface water annually for use only on SRPMIC Reservation lands south of the Arizona Canal and within the exterior boundaries of the SRRD.

12.5 Except as provided in Paragraph 12.7 hereof, SRPMIC shall be entitled to the first 20,000 acre-feet of stored and developed water allocated annually by SRP to the SRP assessed and townsite lands included in the Cities' domestic water accounts maintained by SRP. In the event less than 20,000 acre-feet of stored and developed water is allocated by SRP to the SRP assessed and townsite lands included in the Cities' domestic water accounts in any year, SRPMIC shall be entitled to SRP assessment water for assessed and townsite lands during the same year from the Cities participating in this exchange in a proportional amount equal to the difference between 20,000 acre-feet and the amount of stored and developed water allocated to those Cities' domestic water accounts by SRP. SRPMIC shall reimburse the Cities for this water in an amount equal to the per acre-foot assessment paid for such water to SRP by the Cities. At the beginning of each calendar year, SRP will deduct stored and developed water entitlements or assessment water entitlements, as the case may be, from the Cities' domestic water accounts and transfer those entitlements to a special account maintained for this purpose by SRP on behalf of the SRPMIC ("SRPMIC City Exchange Water Account"). SRP will deduct the following amounts from each City's domestic water account and transfer it to the SRPMIC City Exchange Water Account, provided, however, that the amounts deducted and transferred shall not exceed the total amount allotted to each City's domestic water account for that calendar year. The amount to be deducted from each City's domestic water account in any year shall not exceed the following:

(a) 75 acre-feet from the City of Chandler,
(b) 3,000 acre-feet from the City of Glendale,
(c) 1,000 acre-feet from the City of Scottsdale,
(d) 75 acre feet from the City of Tempe,
(e) 75 acre-feet from the City of Mesa,
(f) 15,700 acre-feet from the City of Phoenix, and
(g) 75 acre-feet from the Town of Gilbert.

SRPMIC's rights and obligations under this Paragraph 12.0 are not dependent upon the actual receipt of Colorado River water by the Cities. In the event there is no assessment or stored and developed water in any City's domestic water account maintained by SRP, neither SRP nor that City shall be obligated to deliver water to SRPMIC as provided in this Paragraph 12.0. To the extent that the provisions of Paragraphs 12.4 through 12.8 hereof are contrary to the provisions of the SRP - City of Phoenix Domestic Water Delivery Agreement, Paragraphs 12.4 through 12.8 hereof shall control.

12.6 If the credits in the SRPMIC City Exchange Water Account exceed 3,000 acre-feet on October 30, SRP will reallocate such excess to the Cities' domestic water accounts in the same proportion as the deductions for those accounts as provided in Paragraph 12.5 hereof. If the SRPMIC City Exchange Water Account exceeds 1,000 acre-feet on November 30, SRP will reallocate such excess to the Cities' domestic water accounts in the same proportions. Upon the instruction of SRPMIC, SRP shall reallocate additional amounts from the SRPMIC City Exchange Water Account on or after October 30 of the year. The Cities shall pay to SRP the normal delivery price of any water used by them which was made available to the Cities under this Paragraph 12.6.

12.7 The delivery of water to SRPMIC under this Paragraph 12.0 will be phased in from 1987 to 2000 (the phase-in period). The annual number of acre-feet of water which shall be available for delivery to SRPMIC by SRP under this Paragraph 12.0 during the phase-in period will be the lesser of (a) the number of agricultural acres within SRRD permanently taken out of agricultural production use to date during the phase-in period multiplied by one acre-foot or (b) 1,540 multiplied by the number of years since 1986. The first delivery of such water will be made, on the order of SRPMIC, during the calendar year in which this Agreement becomes enforceable.

. . .

. . .

12.8 SRPMIC agrees to use no more Bartlett Dam Agreement water north of the Arizona Canal than the amount of water available for delivery to SRPMIC under this Paragraph 12.0. The Cities shall continue to pay assessments and fees to SRP for SRRD lands included within the domestic water agreements with SRP, but the Cities shall bear no cost for the delivery of SRP water to the SRPMIC pursuant to this Paragraph 12.0. SRPMIC will pay to SRP the water delivery charges for this exchange water as provided in Paragraphs 15.1.b, 15.1.c and 15.4 hereof.

12.9 SRP will bear no costs associated with the Cities' River Water Exchange and neither SRP nor its members shall be subject to the provisions of the Reclamation Reform Act as a result of this exchange.

12.10 The Cities shall pay one fourth of the normal CAP M&I capital charge for CAP M&I water as provided in standard CAP M&I water service subcontracts. The Cities shall begin making payment equal to 25 percent of capital charge under the Cities' CAP M&I subcontracts beginning on the effective date of this Agreement or at the time that CAP M&I water service capital charges become payable, whichever is later. Operation, maintenance and replacement (OM&R) charges associated with Colorado River water shall be paid by the Cities to the United States or, at the Secretary's direction, to CAWCD, under the same terms and conditions and at the same acre-foot rate as is provided for CAP M&I water under the Cities' CAP M&I water service subcontracts.

. . .

. . .

. . .

13.0 GROUNDWATER

The SRPMIC asserts its right to unimpeded use of

(a) the groundwater underlying the SRPMIC Reservation and

(b) the deep percolation recharge from water use on the SRPMIC Reservation. However, at such time as non-Indian groundwater users in the East Salt River sub-basin of the Phoenix Active Management Area limit their groundwater pumping to a safe yield quantity, the SRPMIC will limit long-term average pumping on the SRPMIC Reservation to 32,640 acre-feet per year, the safe yield quantity, as provided in Paragraph 4.0 hereof, unless additional groundwater pumping is required by virtue of the elimination of water which would otherwise be provided under Paragraph 11.0 hereof, in which event long-term average groundwater pumping on the SRPMIC Reservation will be limited to 33,250 acre-feet per year. With the exception of Spill Water described in Paragraph 14.0 hereof, total water use on the reservation shall be limited to 122,400 acre-feet per year as provided in Paragraphs 5.0 and 6.0 hereof.

14.0 SPILL WATER

The parties to this Agreement recognize that SRP and SRPMIC, as well as other water users, have asserted appropriative claims to the flood flow waters from the Salt and Verde Rivers in excess of the existing storage capacities of SRP reservoirs on those Rivers ("Spill Water"). The SRP and SRPMIC Spill Water claims are based upon the alleged actual diversion and beneficial use of this Spill Water through Granite Reef Dam and they extend to the capacity of the SRP and SRPMIC transmission and distribution systems at the time of these diversions. Although the United States has filed a claim on behalf of SRPMIC for Spill Water, SRP shall prosecute its claim and that of SRPMIC to this Spill

Water in the Gila River Adjudication. Neither the SRPMIC nor the United States shall prosecute a separate claim for this Spill Water in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to Spill Water in the Gila River Adjudication or in any other administrative or other judicial proceeding. SRP shall use its best efforts to establish the validity of these claims in the Gila River Adjudication and the SRPMIC and the United States agree to provide reasonable assistance to SRP upon request. All parties to this Agreement other than SRPMIC and the United States reserve the right to assert claims to Spill Water, protest the Spill Water claims of SRP and SRPMIC or protest the validity of any appropriation of Spill Water, and/or seek appropriative rights wherein such Spill Water would be stored in Additional Active Conservation Capacity. Any information given by the United States to SRP related to SRPMIC's Spill Water claim will be available to all other parties to this Agreement upon request.

15.0 OPERATION AND MAINTENANCE OF SRPMIC DELIVERY SYSTEM

15.1 SRP will operate and maintain SRPMIC's water delivery system, including groundwater wells and pumps, located south of the Arizona Canal and within the exterior boundaries of the SRRD after that delivery system has been rehabilitated to such a degree that its condition is equivalent to SRP's delivery system. The cost of rehabilitating this system shall be paid as specified in Paragraph 20.0 hereof. So long as SRP operates this segment of SRPMIC's water delivery system it shall deliver water to the high point of each quarter section . . .

of SRPMIC Reservation lands within the SRRD for the following water delivery charges:

(a) Groundwater - water delivery costs will reflect the actual cost of OM&R and power associated with wells on the reservation within the SRRD (approximately $35/acre-foot in 1987);

(b) Stored Water, Additional Stored Water, and Cities' Exchange Stored and Developed Water - the normal cost per acre-foot of stored water as determined on an annual basis by the Salt River Valley Water Users' Association's Board of Governors (approximately $8.50/acre-foot in 1987);

(c) Kent Decree, Bartlett Dam, Cities' Exchange assessment water, RWCD, and RID Exchange Water - fifty percent (50%) of the normal cost per acre-foot of stored water as determined by the Salt River Valley Water Users' Association's Board of Governors (approximately $4.25/acre-foot in 1987).

(d) Spill Water - The cost per acre-foot charged by SRP to SRP shareholders for the delivery of Spill Water.

15.2 Upon further agreement of SRP and SRPMIC, SRP will also operate and maintain SRPMIC's water delivery system, including groundwater wells and pumps, located north of the Arizona Canal after that delivery system has been completed or has been rehabilitated to such a degree that its condition is equivalent to SRP's delivery system. The cost of completing or rehabilitating this system shall be paid as specified in Paragraph 20.0 hereof. So long as SRP operates this segment of SRPMIC's water delivery system it shall deliver water to the high point of each quarter section of SRPMIC lands at SRP's actual cost for operating and maintaining the system.

15.3 A separate agreement will be negotiated between SRP and SRPMIC with the approval of the Secretary, if necessary, for operation and maintenance of the facilities referred to in this Paragraph 15.0. SRP will use its best efforts to hire and train members of SRPMIC to operate and maintain the system. The operation and maintenance agreement will incorporate provisions to this effect.

15.4 Either SRP or SRPMIC may terminate SRP's operation and maintenance of the SRPMIC water delivery system upon twenty-four (24) months' advance written notice to the other party. Upon such termination SRP will deliver SRPMIC's Kent Decree water, Bartlett Dam water, Cities' Exchange assessment water, RID Exchange water, and RWCD water to the SRPMIC's turnouts in the Arizona Canal without charge to SRPMIC. SRP will be paid for all other water delivered to SRPMIC at 50 percent of the normal cost per acre-foot of stored water as determined on an annual basis by the Salt River Valley Water Users' Association's Board of Governors.

15.5 The "normal cost" of SRP stored water reflects the historical subsidy from the SRP power system operation. Should that historical subsidy be reduced, the cost of water delivered to the SRPMIC by SRP would increase. To the extent any such increases exceed the rate of inflation, the Secretary will reimburse SRPMIC for such increases in excess of the rate of inflation from amounts appropriated by the Congress for Indian irrigation or from any other appropriated amounts which the Secretary is authorized to apply to this purpose. The rate of inflation shall be measured by the Water Systems Operation and Cost Maintenance Cost Index as computed and published annually by the Bureau of

. . .

Reclamation, or, in the event such index ceases to be published, by another suitable index.

16.0 LIMITATIONS ON TRANSPORTATION AND USE OF SRP WATER

16.1 The SRPMIC will not transport either Kent Decree water, Stored water, Additional Stored water, Cities' Exchange water, or groundwater pumped within the boundaries of the SRRD to lands or uses outside that portion of the SRPMIC Reservation within the exterior boundaries of SRRD. Bartlett Dam water will not be transported outside the SRRD except as provided for in Paragraph 12.8 hereof.

16.2 Except as provided in Paragraph 19.0 hereof, the water made available from the various sources under this Agreement is solely for use on the SRPMIC Reservation. There are no restrictions on the purposes for which water may be used within the SRPMIC Reservation.

17.0 SRPMIC WAIVER OF CLAIMS

17.1 SRPMIC, on behalf of itself and its members, and the Allottees shall execute waivers and releases of any and all present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent), from time immemorial to the date of their execution of such waivers, which SRPMIC, its members, and Allottees have against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and any and all future claims of rights to water (including water rights in groundwater, surface water, and effluent) from and after the date of execution of such waivers, which SRPMIC, its members, and Allottees have against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona. Nothing in this Paragraph 17.0 shall be construed to bar SRPMIC, its members, or Allottees from asserting any claim for damages to water quality, provided that this paragraph shall be construed to bar SRPMIC, its members, and Allottees from asserting any claim for damage to water quality caused solely by the withdrawal of groundwater in accordance with the Arizona Groundwater Management Act, by the parties' performance of their obligations under this Agreement, or by changes to water quality caused by the delivery or commingling of water delivered from the CAP with any of the water described in Paragraph 6.0 of this Agreement. Nothing herein shall prevent SRPMIC from participating with other entities in further activities to augment the water supply available to the Salt River Valley. Any entitlement to water of any individual member of the SRPMIC or Allottee shall be satisfied out of the water resources provided in this Agreement. The waivers and releases will be in the form set out in Exhibits "3.o.1" and "3.o.2".

17.2 The United States and SRPMIC shall dismiss with prejudice all water and power-related litigation pending in Federal or State courts in which the SRPMIC are plaintiffs or which has been brought by the United States on behalf of the SRPMIC. The dismissals shall be in the form set out in Exhibits "3.a," "3.b," "3.c" and "3.g".

17.3 The United States and the individual Allottees shall settle existing Court of Claims litigation. The Allottees shall execute appropriate releases approving the settlement, and shall provide a waiver of rights against the parties as described in Paragraph 17.1 hereof. The releases shall be in the form set out in Exhibit "3.o.2" hereof and the dismissal shall be in the form of Exhibit "F" hereto.

17.4 The parties shall file a stipulation and form of judgment confirming this Agreement in the Gila River Adjudication. The stipulation and judgment shall be in the form set out in Exhibit "3.e".

17.5 Nothing in this Paragraph 17.0 shall be construed as a waiver or release by the SRPMIC or its members or Allottees of any claim which relates to the enforcement of the terms of this Agreement or any other agreement implementing this settlement. The United States and SRPMIC waive their sovereign immunity from suit in Federal District Court in regard to any claim which relates to the interpretation or enforcement of this Agreement.

17.6 With respect to the Allottees, the enactment by the Congress of the United States of an act extinguishing all claims of the Allottees as described in this Paragraph 17.0 and in Exhibit 3.o.2. to this Agreement and providing for a method of compensation for such claims by the United States shall satisfy the provisions of this Paragraph 17.0 with respect to the Allottees.

. . .

. . .

. . .

18.0 RECHARGE ARRANGEMENTS

SRP, Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, Gilbert and the SRPMIC will cooperate in studying the location of potential sites for water related underground storage and recovery facilities or recharge facilities on SRP, City, State of Arizona, Federal and SRPMIC lands. The SRPMIC will provide reasonable access to the SRPMIC Reservation for the purpose of conducting such a study to the extent that such a study does not unreasonably interfere with SRPMIC land use and does not unreasonably damage SRPMIC land. If the study determines that a potential site on the SRPMIC's Reservation is appropriate for recharge use, and such use will not unreasonably interfere with SRPMIC land use and the facilities are operated as comprehensive projects among the parties, the parties identified in this Paragraph 18.0 will negotiate in good faith for the use of necessary land for the location, construction and operation of such a facility.

19.0 CAP WATER LEASE

19.1 The Secretary and SRPMIC shall amend their contract dated December 11, 1980, for the delivery of 13,300 acre feet of CAP water, to permit the leasing by SRPMIC of all of that CAP entitlement to the City of Phoenix for a term of 99 years from the year 2000; provided that the Secretary shall be a party to any contract or lease. The maximum annual amount of water to be used by SRPMIC as provided in Paragraphs 5.0, 6.0 and 13.0 hereof shall be reduced by the amount of CAP water leased for use outside the SRPMIC Reservation. SRPMIC shall lease all right, title and interest it has under the terms of the CAP Indian Water Delivery Contract between the United States and SRPMIC dated

December 11, 1980 ("the Contract"), to 13,300 acre-feet of CAP water to the City of Phoenix for a term not to exceed 99 years from the year 2000. The Secretary will enter into an agreement extending the Contract term to the year 2099. The City of Phoenix shall pay for the lease the sum of $16 million on the enforceability date of this Agreement (as set forth in Paragraph 21.6 hereof). The City of Phoenix may elect, on the effective date of this Agreement, to make partial payment of the $16 million as follows:

(a) A down payment of $8 million on the effective date of this Agreement.

(b) Four annual payments of $2,000,000 each, payable on the next four anniversary dates of the enforceability date of this Agreement, together with interest on the unpaid balance at an annual rate determined as follows: 1% (one percent) over the net interest cost (expressed as a percentage) paid by the City of Phoenix on its Water Revenue Refunding Bonds, Series 1986, as determined on the enforceability date of this Agreement.

(c) Without any prepayment penalty, the City of Phoenix may at any time elect to pay the balance in full with interest figured to the date of such full payment.

The contract or lease shall bind the City of Phoenix to the provisions of Articles 4.3 and 4.8 of the City of Phoenix's CAP M&I water service subcontract as revised in May 1984, with respect to any water leased for M&I uses or for underground storage for later M&I uses. The lease and assignment of CAP water from SRPMIC to the City of Phoenix shall not obligate either the City of Phoenix or SRPMIC to pay CAP capital repayment charges. The City of Phoenix shall pay full operation, maintenance and replacement costs to the United

States, or, at the Secretary's discretion, directly to CAWCD. The lease shall be evidenced by a water lease agreement between SRPMIC, the Secretary and the City of Phoenix in the form attached as Exhibit "3.m" hereto.

19.2 SRPMIC shall direct the Secretary to deliver its allocation of its leased water to the lessee, provided, however, neither the Secretary nor CAWCD shall be obligated to make such deliveries if delivery or schedule of deliveries to the lessee creates a greater burden on CAP facilities than deliveries to SRPMIC would have created.

19.3 For purposes of determining CAWCD's construction cost repayment obligation, all CAP water leased by SRPMIC to City of Phoenix shall be treated as if it were being made available for delivery to entities other than CAWCD (as the Contractor under the contract with the United States dated December 15, 1972 for delivery of water and repayment costs of the Central Arizona Project).

19.4 Except for CAP water, no other water provided to SRPMIC pursuant to this Agreement shall be marketable by SRPMIC.

20.0 COST SHARING RESPONSIBILITIES

20.1 Since the duty of water agreed to by SRPMIC is realistic only if the water transmission and delivery system employed is highly efficient, the Secretary will request the Congress to appropriate $67.7 million for facilities to augment and to renovate the SRPMIC's existing water delivery system, to subjugate additional lands and for other purposes. The parties will support the requested appropriation and any supplemental appropriation necessary. Of the $67.7 million, approximately $17 million will be designated for rehabilitation of SRPMIC's existing water delivery system and lands, $20 million for the construction of a water delivery system and development of no more than 3,000 acres of new lands, $16 million as a contribution to a trust fund for SRPMIC to be used for development of additional land or other Community development, $745,000 for Additional Active Conservation Capacity, and $14 million to obtain the rights to 22,000 acre-feet of Colorado River water needed for the Cities' Colorado River Water Exchange described in Paragraph 12.0. In addition, the United States shall make available $10 million for the SRPMIC's claims against the United States, which sum will be placed in the trust fund referred to in Paragraph 20.2(b) hereof. This Agreement includes local water provided to SRPMIC by SRP, RWCD, RID and the Cities, which has been estimated to have a value of $96 million. In addition to the local water contribution provided for herein, there shall be an additional local cash contribution of $21 million to be paid into the trust fund described in Paragraph 20.2(b) hereof.

20.2 The parties have agreed that the direct costs including contributions in-kind described in Paragraph 21.1, subject to authority and appropriations where necessary, will be funded or contributed as follows:

(a) Direct Contributions To Costs

Local Contributions

1. In-kind

LOCAL WATER (Estimated In-Kind Value)	$ 96 Million

. . .

2. Money

CAP WATER LEASE	16 Million	
STATE OF ARIZONA	3 Million	
SRPMIC	2 Million	
SUBTOTAL	$117 Million	(60.1%)

U.S. Contribution

COLORADO RIVER WATER	$14 Million	
FACILITIES-WATER SUPPLY	20 Million	
FACILITIES-REHAB	17 Million	
SRPMIC COURT OF CLAIMS	10 Million	
TRUST FUND	16 Million	
STORAGE	.7 Million	
SUBTOTAL	$77.7 Million	(39.9%)

(b) Trust Fund Composition

Cash contributions will be made to a trust fund to be used for water development projects and other economic and community development projects. The trust fund will be composed of the following contributions:

UNITED STATES	$16 Million
SRPMIC COURT OF CLAIMS	10 Million
CAP WATER LEASE	16 Million
STATE	3 Million
SRPMIC	2 Million
TOTAL	$47 Million

. . .

. . .

SRPMIC shall invest monies received under this Paragraph 20.2(b) in interest bearing deposits and securities until expended. The authorized governing body of SRPMIC may spend all or part of the principal and the income accruing on such principal on behalf of SRPMIC for water development projects and other economic and community development projects, including planning and administration related to such projects.

The Secretary shall not be responsible for the review, approval or audit of the use and expenditure of the monies referred to in this section, nor shall the Secretary be subject to liability for any claim or cause of action arising from SRPMIC's use and expenditure of such monies. No portion of such monies shall be used for per capita payments to any members of SRPMIC.

20.3 CAP OM&R charges to SRPMIC initially shall be reduced for a period of ten years from the date of the first delivery under the SRPMIC's CAP delivery contract to an amount equal to the average OM&R cost of SRP water to the SRPMIC. If SRPMIC leases its CAP water supplies as provided under Paragraph 19.0 hereof, prior to expiration of the 10 year period, the entities leasing the water will pay full OM&R costs.

20.4 The United States shall make no claim for reimbursement of construction costs arising out of the implementation of this Agreement against any Indian-owned land within the SRPMIC Reservation and no assessment shall be made in response to such costs against such lands.

. . .

. . .

. . .

21.0 OTHER PROVISIONS

21.1 Disclaimer - Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to water in any judicial or administrative proceeding.

21.2 Evidentiary Effect of Negotiations - This Agreement has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this Agreement.

21.3 Effect of Execution by State of Arizona - Execution of this Agreement by the State of Arizona constitutes the confirmation that it is the policy of the State of Arizona to assist in carrying out the provisions hereof to the extent it may do so in accordance with its responsibility and authority under the law. It is not intended that this Agreement shall be determinative of the action to be taken by any state agency in any adjudicatory or rule making proceeding. Nothing herein shall be construed as a waiver of any rights which the State of Arizona has as to its trust lands under the Enabling Act.

21.4 Water delivery during Plan 6 construction - The parties to this Agreement recognize that there may be interim water supply shortages during Plan 6 construction, other provisions of this Agreement notwithstanding. The SRPMIC agrees to accept during that construction period shortages in water supply that are of the same magnitude as shortages accepted by other Salt River water users for the affected classes of water. Details of water supply and shortage during construction will be agreed to in advance of Roosevelt Dam modification.

21.5 SRPMIC/SRP Electricity Rate Litigation

21.5.1 On or before the enforceability date of this Agreement, SRPMIC shall dismiss with prejudice that litigation captioned Salt River Pima - Maricopa Indian Community v. Salt River Valley Water Users' Association, et al., No. CIV 83-2500 WPC.

21.5.2 After dismissal of the litigation as provided in Paragraph 21.5.1 hereof, all electricity used by SPRMIC for agricultural groundwater pumps on the SRPMIC Reservation shall be billed by SRP at SRP's Standard E47 Agricultural Pumping Rate or any future rate which is the standard rate applied to SRP agricultural pumping customers. Upon dismissal of the litigation, SRP shall transfer ownership to SRPMIC, free of charge, those electrical distribution facilities associated with these pumps which must be owned, maintained and replaced by SRP customers being billed for agricultural pumping at the Standard E47 Agricultural Pumping Rate. These facilities include, but are not limited to, the transformers adjacent to the pumps, the transformer platforms and poles, wiring from the transformers to the pumps, and the meter boxes. The jumper wires shall be transferred to SRPMIC on single pole installations and retained by SRP on two pole structures. SRP shall retain ownership of the disconnects, phase wires, neutral wires, meters and metering transformers.

Thereafter SRPMIC shall maintain and replace at its cost all facilities transferred to it by SRP under this Paragraph 21.5.2.

21.5.3 SRPMIC shall be entitled to participate in SRP's Experimental Time of Week Rider for agricultural pumping by SRPMIC on the SRPMIC Reservation for as long as this experimental program remains in effect; provided, however, that SRPMIC must satisfy all conditions imposed by SRP on participants in the Experimental Rider. The primary condition to participating in this program is the customer's agreement to turn-off each pump for the same designated 10 hour period each week from May 15 through October 14 of each year. In the event this Experimental Rider is cancelled by SRP, SRPMIC shall be entitled to participate in any replacement experimental or permanent rate program applicable to agricultural pumping by SRP customers; provided, however, that SRPMIC must satisfy all conditions imposed by SRP on participants in all future programs.

21.6 This Agreement shall be effective and binding upon the parties that execute it when it has been executed by all parties other than the United States and when the parties to the Agreement other than the United States have executed all Exhibits to the Agreement which call for their signatures. Other than to take all steps necessary to cause the events described in Paragraphs 21.6(a) and (b) hereof to occur, no party to the Agreement shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under the Agreement or under any of the Exhibits until such time as all of the following events have occurred, which date is referred to herein as the "enforceability date":

. . .

(a) The Congress of the United States has enacted, on or before December 31, 1989, an Act authorizing the appropriations required by this Agreement, authorizing and requiring the Secretary to perform all obligations to be performed by the Secretary under the terms of the Agreement;

(b) The Act has become fully effective by December 31, 1990; and

(c) The permits required to effect the RID exchange pursuant to Paragraph 11.0 hereof have been granted by December 31, 1990. This condition may be eliminated if waived in a writing delivered to the parties to this Agreement by SRPMIC on or before December 30, 1990.

The parties have agreed to Exhibit "21.6(a)" as a form of Act of Congress which will provide the federal action required to carry out this Agreement. Any Act of Congress which varies materially from Exhibit "21.6(a)" will not satisfy the requirement of subsection (a) of this Paragraph 21.6 without the consent of the parties affected by the variance.

In the event each of the foregoing events shall not have occurred, by the date indicated, this Agreement shall be of no further force or effect.

21.7 USES - All parties to this Agreement recognize that water uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from agricultural uses to municipal and industrial uses. The parties agree that such changes in use are valid, and that water appurtenant to lands which are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I uses on such urbanized lands and the water rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of use, these water rights are as described in the Kent Decree, the Lehane decision (W. C.

Lehane v. Salt River Valley Water Users' Assoc., et al., Cause No. 32021-C) and paragraphs 21.8 and 10.1 hereof and the documents referred to therein. No party to this Agreement shall challenge or otherwise object to these rights on the basis of change of use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the parties agree that the historical practices of the Cities and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached hereto as Exhibit "21.7." Nothing in this Paragraph 21.7 shall be construed as authorizing the delivery of water to any municipality by SRP for M&I uses within the SRRD in the absence of a written delivery agreement between any such municipality and SRP.

21.8 Confirmation of Rights

21.8.a The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, recognize, confirm and agree not to object to, dispute or challenge, in the Gila River Adjudication, or otherwise, the rights of the City of Phoenix, which rights are described, stated, confirmed or established in the following documents:

(1) Contract No. 1830 between the United States of America, the City of Phoenix and the Salt River Valley Water Users' Association dated October 7, 1948.

(2) Certificate of Water Right No. 1999 from the State of Arizona to the City of Phoenix.

. . .

21.8.b The parties to this Agreement, except for the United States acting as trustee for Indian tribes other than SRPMIC, recognize, confirm and agree not to object to, dispute, or challenge in the Gila River Adjudication, or otherwise, the rights of SRP and its shareholders to the waters of the Salt and Verde Rivers, which rights are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

(1) Notices of Appropriation of Water posted and recorded by the Hudson Reservoir and Canal Company with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at page 283 on April 20, 1893, Book of Canals No. 1 at page 310 on August 22, 1893, and Book of Canals No. 2 at page 74 on August 23, 1901.

(2) Notice of Appropriation of Water posted and recorded by Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 155 on February 8, 1906.

(3) Notice of Appropriation of Water posted on February 6, 1906 and recorded by Louis C. Hill, Supervising Engineer, United States Geological Survey, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 156 on February 8, 1906.

(4) Notice of Appropriation of Water posted on March 4, 1914, and recorded by John P. Orme, President of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 379 on March 6, 1914.

(5) Decision and Decree, and all Decrees supplemental thereto, entered in Hurley v. Abbott, In the District Court of The Third Judicial

District of The Territory of Arizona, In and For The County of Maricopa, No. 4564, March 1, 1910.

(6) Decision and Decree, and all supplemental Decrees thereto, entered in Benson v. Allison, in the Superior Court of Maricopa County, State of Arizona, No. 7589, November 14, 1917, solely as applied to the Northeast 1/4 of Section 25, Township 1 North, Range 1 East, G&SRB&M.

(7) Salt River Valley Water Users' Association Articles of Incorporation, as amended, as of the effective date of this Agreement.

(8) Water Right applications for Lands in Private Ownership and Lands Other than Homesteads Under the Reclamation Act between The United States of America, Department of Interior, Bureau of Reclamation and individual shareholders of the Salt River Valley Water Users' Association.

(9) Agreement between the United States of America and Salt River Valley Water Users' Association, dated June 25, 1904.

(10) Contract between the United States of America and Salt River Valley Water Users' Association dated September 6, 1917, as amended on July 26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10, 1941, and June 30, 1950.

(11) Contract between the United States of America and Salt River Valley Water Users' Association, dated June 3, 1935 (Verde River Storage Works).

(12) Contract between the United States of America and Salt River Valley Water Users' Association, dated November 26, 1935, as amended on October 14, 1936, October 2, 1939 and September 10, 1941 (Construction of Bartlett Dam).

. . .

(13) Contract between Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District, dated March 22, 1937, as amended on February 28, 1944, and September 12, 1949.

(14) Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation and Defense Plant Corporation, dated March 1, 1944 (Horseshoe Dam Construction and Operation).

21.9 Order of Spill - The City of Phoenix and the SRPMIC storage entitlements under Paragraph 11.2 hereof shall be the first to spill from Stewart Mountain Dam on the Salt River and Bartlett Dam on the Verde River; the entitlements of the City of Phoenix and SRPMIC will spill in pro rata amounts. The SRPMIC temporary storage entitlement for Kent Decree water under Paragraph 7.4 hereof shall spill from Stewart Mountain Dam on the Salt River after the storage entitlements provided in Paragraph 11.2 hereof. All other storage entitlements in SRP reservoirs on the Salt and Verde Rivers shall spill after the entitlements described in Paragraphs 11.2 and 7.4 hereof.

21.10 Governing Law - This Agreement will be construed in accordance with the laws of the State of Arizona. Nothing contained herein waives the right of the United States or the SRPMIC to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under this Agreement.

21.11 Succession - This Agreement shall inure to the benefit of and be binding upon the successors of the parties hereto, including, without limitation, any operating agent which succeeds to the obligations of SRP hereunder.

. . .

21.12 Effect on CAP Allocations - The Secretary and the State of Arizona recognize and agree that the water to be made available to the Cities and Town pursuant to Paragraphs 10.3 (conversion rights and potential water marketed by FMIC), 11.0 (RID Exchange water), 12.2 (Cities' River Water Exchange), and 19.0 (SRPMIC lease) hereof constitute water resources received by such Cities and Town in replacement of existing water resources and in good faith settlement of litigation of SRPMIC water claims. The receipt of or entitlement to water from these sources shall not be counted in any allocation or reallocation of the CAP supply.

21.13 Miscellaneous Provisions

21.13.a Counterparts - This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

21.13.b Notices - Any notice to be given hereunder shall have been properly given when received by the officer or manager designated herein, or when deposited in the United States mail in an Arizona or Washington, D.C., post office, certified or registered, postage pre-paid, addressed as follows:

As to the United States of America:
Secretary of the Interior
Department of the Interior
Washington, D.C.

As to the State of Arizona:
Office of the Governor
1700 West Washington
Phoenix, Arizona 85007

As to SRPMIC:
Salt River Pima Maricopa Indian Community
Route 1, Box 216
Scottsdale, Arizona 85256
Attn: Community Manager

As to the CAWCD:
Central Arizona Water Conservation District
23636 North Seventh Street
Phoenix, Arizona 85024
Attn: General Manager

As to the SRP:
Salt River Project
P.O. Box 52025
Phoenix, Arizona 85072-2025
Attn: General Manager

As to the RWCD:
Roosevelt Water Conservation District
P.O. Box 168
Higley, Arizona 85236
Attn: Manager

As to the RID:
Roosevelt Irrigation District
P.O. Box 95
Buckeye, Arizona 85326
Attn: Superintendent

As to the City of Phoenix:
City of Phoenix
251 West Washington
Phoenix, Arizona
Attn: City Manager

As to the City of Scottsdale:
City of Scottsdale
3939 Civic Center Plaza
Scottsdale, Arizona 85251
Attn: City Manager

As to the City of Glendale:
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attn: City Manager

As to the City of Mesa:
City of Mesa
55 North Center Street
P.O. Box 1466
Mesa, Arizona 85201
Attn: City Manager

As to the City of Tempe:
City of Tempe
31 East 5th Street
Tempe, Arizona 85281
Attn: City Manager

As to the City of Chandler:
City of Chandler
200 East Commonwealth
Chandler, Arizona 85225
Attn: City Manager

As to the Town of Gilbert:
Town of Gilbert
119 North Gilbert Road
Gilbert, Arizona 85234
Attn: Town Manager

. . . .

or addressed to such other address as the party to receive such notice shall have designated by written notice given as required by this Paragraph 21.12.b.

IN WITNESS WHEREOF, the parties have executed this Agreement dated as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: ______________________
Secretary of the Interior

THE STATE OF ARIZONA

Attest: ______________________
Secretary of State

By: ______________________
Governor

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: ______________________
Secretary
Approved as
to Form: ______________________
General Counsel

By: ______________________
President

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Attest: ______________________
Secretary
Approved as
to Form: ______________________

By: ______________________
President

SALT RIVER VALLEY WATER USERS' ASSOCIATION

Attest and
Countersign: ______________________
Secretary
Approved as
to Form: ______________________

By: ______________________
President

. . .

. . .

. . .

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Attest and
Countersign: ____________________
Secretary

By: ____________________
President

Approved as
to Form: ____________________

ROOSEVELT WATER CONSERVATION DISTRICT

Attest: ____________________
Secretary

By: ____________________
President

Approved as
to Form: ____________________

ROOSEVELT IRRIGATION DISTRICT

Attest: ____________________
Secretary

By: ____________________
President

Approved as
to Form: ____________________

CITY OF PHOENIX, Marvin A. Andrews, City Manager

Attest: ____________________
Clerk

By: ____________________

Approved as
to Form: ____________________
City Attorney

____
Mayor, City of Phoenix

CITY OF SCOTTSDALE

Attest: ____________________
City Clerk

By: ____________________
Mayor

Approved as
to Form: ____________________
City Attorney

. . .

. . .

. . .

. . .

CITY OF GLENDALE

Attest: ______________________ By: ______________________
Clerk
Mayor
Approved as
to Form: ______________________
City Attorney

CITY OF MESA

Attest: ______________________ By: ______________________
Clerk
City Manager
Approved as
to Form: ______________________
City Attorney

CITY OF TEMPE

Attest: ______________________ By: ______________________
Clerk
Mayor
Approved as
to Form: ______________________
City Attorney

CITY OF CHANDLER

Attest: ______________________ By: ______________________
Clerk
Mayor
Approved as
to Form: ______________________
City Attorney

TOWN OF GILBERT

Attest: ______________________ By: ______________________
Clerk
Mayor
Approved as
to Form: ______________________
City Attorney

STATEMENT BY SENATOR DENNIS DECONCINI

HEARING ON THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT

MARCH 22, 1988

240

I WANT TO EXTEND A WARM WELCOME AND APPRECIATION TO ALL OF THE WITNESSES APPEARING BEFORE THE JOINT HEARING THIS MORNING ON A VERY IMPORTANT AND TIMELY INDIAN WATER SETTLEMENT ACT. THE WILLINGNESS OF BOTH THE INDIAN AND NON-INDIAN PARTIES TO SIT DOWN AND OPENLY AND HONESTLY RESOLVE LONGSTANDING CLAIMS OF THE SALT RIVER INDIAN COMMUNITY IS COMMENDABLE AND HAS ACHIEVED A VERY FAIR AND EQUITABLE RESULT. AS LITTLE AS THREE

YEARS AGO, I KNOW THERE ARE MANY IN THIS ROOM, INCLUDING THIS SENATOR, WHO NEVER THOUGHT IT POSSIBLE TO REACH A NEGOTIATED SETTLEMENT OVER WATER RIGHTS CLAIMS OF THE SALT RIVER COMMUNITY SUPPORTED BY ALL THE MAJOR PARTIES INVOLVED. THAT HAS BEEN ACCOMPLISHED AND I HEARTILY CONGRATULATE THOSE INDIVIDUALS HERE TODAY WHO HELPED TO FRAME THIS SETTLEMENT. IF ENACTED, THE SETTLEMENT, THROUGH THE PROVISIONS OF H.R. 4102 AND S. 2153, WILL HELP US AVOID

COSTLY AND PROTRACTED LITIGATION WHICH MAY HAVE ADVERSE CONSEQUENCES FOR THE WATER FUTURE OF OUR STATE AS A WHOLE. IT WILL PROVIDE A DEPENDABLE SUPPLY OF WATER FOR THE SALT RIVER INDIAN COMMUNITY TO MORE FULLY DEVELOP ITS LANDS AND PURSUE ITS ECONOMIC OBJECTIVES. AT THE SAME TIME, IT WILL HAVE A MINIMAL IMPACT ON THE ALLOCATION OF WATER FOR MUNICIPAL AND INDUSTRIAL USE WITHIN THE VALLEY AREA.

The role of Interior Department officials, Jim Ziglar, Ken Maxie, Hayden Lee and others has been very beneficial and integral to the formulation of this settlement proposal. While no doubt there continue to be concerns on the part of the Administration about the cost of implementation of the Salt River Agreement, I am hopeful that we can work through this problem and enact a bill that has the support of the Department of the

INTERIOR. ALL OF US HERE RECOGNIZE THAT THE SETTLEMENT OF INDIAN WATER CLAIMS WILL HAVE COSTS -- THERE IS NO WAY TO AVOID THEM. THIS AGREEMENT, ON THE OTHER HAND, CONTAINS SUBSTANTIAL COST-SHARING FROM NON-FEDERAL PARTIES.

I AM SURE MY COLLEAGUES WILL AGREE THAT THE NEGOTIATED SETTLEMENT ROUTE IS FAR PREFERABLE TO LITIGATION, MUCH MORE POSITIVE FOR ALL PARTIES INVOLVED, AND LESS COSTLY IN THE LONG RUN. GENTLEMEN, I

LOOK FORWARD TO HEARING YOUR TESTIMONY TODAY ON A VERY HISTORIC INDIAN WATER AGREEMENT.

246

REMARKS BY THE
HONORABLE JON KYL

BEFORE THE
HOUSE COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS

MARCH 24, 1988

MR. CHAIRMAN, I appreciate your allowing me this opportunity to join the panel today in order to express my support for H.R. 4102, the Salt River Pima-Maricopa water rights settlement bill.

This legislation is the culmination of years of hard negotiations between the Salt River Pima-Maricopa Indian Community, the State of Arizona and a dozen municipal and agricultural entities in the state. Secretary Don Hodel was also an important force in keeping the negotiations on track with his efforts to carry out the Administration's policy that Indian water rights claims should be negotiated, not litigated. We still have some work to do with the Secretary, but his efforts to date deserve special commendation.

It should be noted that, in any issue as complex as this, with so many interests in Arizona affected by the outcome, it is difficult to achieve a 100% consensus; but, we have come as close to that goal in this legislation as is reasonably possible.

The settlement embodied in H.R. 4102 requires some give-and-take from all sides. Non-Federal contributions make up the bulk of the agreement -- 60% of the entire value of the settlement, totalling about $117 million. The Federal government's contribution will amount to approximately $77 million. The Indians have reduced their water claim from 200,000 acre feet to about 122,400 acre feet per year. Nearly everyone is better off with this settlement and an end to the litigation, than without it.

This is a fair settlement, and I would like to commend you, Mr. Chairman, for bringing it before the Committee so promptly. I will continue to work closely with you and the other members of the Committee, the Administration, and the people in Arizona to see that this legislation is passed as expeditiously as possible.

Thank you.

MARICOPA AUDUBON SOCIETY
NATIONAL WILDLIFE FEDERATION
SIERRA CLUB
FRIENDS OF THE EARTH

March 24, 1988

The Honorable Morris K. Udall
Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We are concerned participants in the resolution of water resource issues affecting natural habitat on the Salt and Verde Rivers in Arizona. We commend the Salt River-Pima-Maricopa Indian community, Salt River Project, Central Arizona Water Conservation District, and the participating local and state governmental bodies in Arizona for resolving water rights disputes between them without calling for the construction of new dams.

The February 12, 1988 agreement demonstrates that appropriate solutions to important water rights issues in Arizona are feasible within the structure of the compromise reached last year in eliminating Cliff Dam from Plan 6.

We have no objection to the passage of H.R. 4102 in its present form. We commend the parties and the participating members of the Delegation for arriving at a non-structural solution which respects the need for preservation of natural habitat areas that sustain a small and highly endangered bald eagle population on these rivers.

255

We appreciate this opportunity to express these views to the Committee. Please accept this letter for inclusion in the record of the hearing on H.R. 4102.

Sincerely,

Herbert S. Fibel, President
Maricopa Audubon Society

Robert Witzeman, M.D.
Maricopa Audubon Society

Edward R. Osann, Director
Water Resources Program
National Wildlife Federation

Rob Smith
Southwestern Representative
Sierra Club

David R. Conrad
Water Resources Specialist
Friends of the Earth

STATEMENT
of
THE HONORABLE JOHN J. RHODES, III
First District - Arizona

Before the Joint Hearing
of
The House Committee on Interior and Insular Affairs and
The Senate Select Committee on Indian Affairs

Regarding
H.R. 4102 & S. 2153
Providing for the Settlement of Water Rights Claims
of
The Salt River Pima-Maricopa Indian Community

March 24, 1988

CHAIRMAN UDALL and CHAIRMAN INOUYE, my colleagues and friends from Arizona, this occasion is a highlight of my first term in the Congress, representing the First District of Arizona. I need not recite the crucial importance of water to Arizona, especially to central and southern Arizona.

However, a historical perspective on this particular Indian water rights settlement is appropriate.

Over 2,000 years ago, the Pima Indians first irrigated the lands of the Salt River Valley in this northern portion of the Sonora Desert. Then, the white man entered America and eventually moved west, gobbling up homesteads; displacing the Indians; disrupting their agrarian lifestyle and livelihood. The Indian wars commenced. Eventually, the bloodletting ceased, and peace emerged from the destruction and discrimination.

Several months prior to the formal establishment of the Salt River Pima-Maricopa Indian Community in June, 1879, General Erwin McDowell, stationed in this desolate desert area, telegramed General Sherman. A now prophetic portion of his message read ---

> "There is no question in my mind as to the duty of the United States Government toward these Indians, who did more to give peace and security to Arizona than all the white troops combined, and who are not nomads, but farmers and intelligent people....the U.S. should at once take measures by injunction or otherwise to restore to these Indians the rights to water to which they are entitled."

Well, its about 109 years later, and General McDowell's assessment of the "duty" of the Federal government remains largely unfulfilled. Yet the duty remains, stronger than ever, bolstered by Congressional and Administration edicts that champion the Federal trust responsibility for Indians. To be factual, significant progress has been made regarding other tribes and other Indian water rights claims. But, we need to do more to convert the rhetoric to reality.

We are here today to start the formal consummation of that Federal duty to this particular Indian community. We are to further test the policies and the promises of the Congress and the Administration which profess to prefer negotiation rather than litigation of Indian water claims.

The leadership and residents of this Indian Community are here with an outstretched hand -- not to ask for a handout, but to offer a helping hand, extended in peace and trust. We are here to fulfill a commitment voiced by General McDowell 109 years ago.

Since that time, our society has become more complex, as Indians and non-Indians have come to live together in relative harmony. Many Indian reservations, especially the Salt River Pima-Maricopa Indian Community, have made major strides in using their own energies and foresight to develop a solid economic base for achieving independence and self-sufficiency. Through their own hard work and ingenuity, the Community now generates 75% of the revenues necessary to meet its needs. The remaining ingredient here -- providing certainty to the supply and use of their legitimate water rights -- is essential to making their search for self-sufficiency, and dignity, complete.

To make this goal a reality requires that the negotiated settlement of the Community water rights claims include the cities and industrial and agricultural water users that have grown up around the reservation.

Succinctly put, this settlement -- painstakingly nurtured and finalized over the past two years -- discharges the Federal responsibility as trustee of the Indian Community. The settlement provides for Federal appropriations and local contributions --

a roughly 50/50 sharing of the burden -- for rehabilitation of the existing irrigation system; construction of a water distribution system and development of new agricultural lands; contributions to a trust fund for development of additional land and other Community development, and funds for purchase of additional active water storage and acquisition of Colorado River water supplies. All existing Indian water rights claims against the Federal government would be extinguished. N.

But, much more than a final settlement of the Indian water rights claims is accomplished. The serious inherent threats to municipal, industrial and non-Indian agricultural water supplies are also removed. Not only is 122,000 acre feet of water finally affirmed for the Indian Community, but, through an intricate and innovative system involving contract water sales, water exchanges and other agreements, seven major cities and five Salt River Valley industrial and agricultural water suppliers are provided certainty and finality regarding the source and quantity of future water supplies.

This settlement is as crucial to over one-and-a-half million non-Indian neighbors as it is to the Salt River Pima-Maricopa Indian Community itself. This settlement and the legislation we are considering today may require some fine-tuning and further discussion before we arrive at a final product.

250

These Committees and the Arizona Congressional Delegation are committed to be active facilitators; to encourage all the parties to act in harmony to fashion a final, comprehensive settlement. My hope is today we will review the overwhelming positive aspects of this settlement, and develop constructive solutions to any remaining areas of concern.

I welcome my friends and neighbors from Arizona, and look forward to their testimony.

Thank you.

###

251

SENT BY:RYLEY CARLOCK EVO ; 3-23-88 10:21AM ; 6028206041-

March 22, 1988

TO WHOM IT MAY CONCERN:

RE: SRPMIC Settlement

The San-Tan Irrigation & Drainage District is an agricultural contractor of CAP water and it supports the SRPMIC Settlement.

We reserve the right to withhold support on final disposition of the settlement.

San-Tan Irrigation & Drainage District

By R. H. Simone
President

257

SENT BY:RYLEY CARLOCK ETC ; 3-23-88 10:22AM ; 6025205041→ ;# 3

Queen Creek Irrigation District
22725 E. OCOTILLO RD.
P.O. BOX 690
QUEEN CREEK, ARIZONA 85242

BOARD OF DIRECTORS
STEPHEN SOSSAMAN
~~ROY WILLIS~~
KEITH POWER

TELEPHONE
(602) 987-3002

March 22, 1988

Mike Leonard
R.W.C.D.
P.O. Box 95
Higley , Arizona

RE: Salt River Pima-Maricopa Community Water Rights Settlement

Dear Sir:

The Queen Creek Irrigation District agrees in principal, with the proposed settlement of the Salt River Pima-Maricopa Community Water Rights Settlement Agreement. However, before we can commit to total agreement to this settlement we will need to see the final proposal to this settlement.

Yours very truly

Roy Willis

Roy Willis
Vice President

SENT BY: RYLEY CARLOCK [illegible] ; 3-22-88 11:[illegible] ; 602[illegible]

CHANDLER HEIGHTS CITRUS IRRIGATION DISTRICT
POST OFFICE BOX 38
CHANDLER HEIGHTS, ARIZONA 85227

21 March, 1988

Ref: SRP-MIC Settlement

To Whom It May Concern:

The Chandler Heights Citrus Irrigation District is an agricultural contractor of CAP water and it supports the SRP-MIC settlement. We reserve the right to withhold support on final disposition of the settlement.

Dan Kleinman President
Dan Kleinman, Pres.
Chandler Heights Citrus Irrigation
District

BOB STUMP
3d District, Arizona

211 Cannon Building
Washington, DC 20515
(202) 225-4576

District Office
5001 Federal Building
Phoenix, AZ 85025
(602) 261-6923

Congreſs of the United States
House of Representatives
Washington, DC 20515

ARMED SERVICES COMMITTEE
SUBCOMMITTEE ON RESEARCH
AND DEVELOPMENT
SUBCOMMITTEE ON INVESTIGATIONS
DEFENSE POLICY PANEL

VETERANS AFFAIRS COMMITTEE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
RANKING MINORITY MEMBER
SUBCOMMITTEE ON HOSPITALS
AND HEALTH CARE

Statement of
CONGRESSMAN BOB STUMP
concerning H.R. 4102,
Salt River Pima-Maricopa Indian Community
Water Rights Settlement Act of 1988
March 24, 1988

Mr. Chairman, I join my colleagues today in support of the bill, H.R. 4102, which would ratify the water rights settlement agreement among the Salt River Pima-Maricopa Indian Community and various non-Indian water interests in the State of Arizona.

There is no doubt that the ability to negotiate the settlement of water rights disputes is preferable to litigation. I support the practicality of that concept, as it affords the opportunity for interested parties to participate in building a consensus and meeting the needs of diverse group of interests. Those who have thus far participated in the negotiations are to be commended for their work and efforts in reaching this point.

Mr. Chairman, I have some serious concerns about the overall cost of the settlement, and hope that as we proceed from today's hearing in the process of ratifying the agreement, that a careful review is made of those provisions and reductions made were possible.

Appreciate the opportunity to comment on H.R. 4102.

STATEMENT BY HERBERT R. DRINKWATER, MAYOR OF SCOTTSDALE, ARIZONA, IN SUPPORT OF HR 4102 AND S 2153

The City of Scottsdale, Arizona, borders on the western boundary of the Salt River-Pima Maricopa Indian Community. We, along with the City of Mesa, are the closest neighbors to the Indian Community of all the parties to this settlement. The population of Scottsdale has grown steadily over the past few decades and is continuing to grow. In the past, Scottsdale has been dependent to a large extent on pumped groundwater. Scottsdale was named as a defendant in several lawsuits in which the Indian Community claimed that our groundwater pumping had damaged the Indian Community. Scottsdale also claims rights to use surface water from the Salt River. The Indian Community's claims in the ongoing general stream adjudication are potentially adverse to our own claims to Salt River water. Thus, the City of Scottsdale has an acute interest in this settlement.

As our contribution to the settlement, Scottsdale will give the Indian Community one thousand (1,000) acre feet of water per year from the Salt and Verde Rivers in exchange for twelve hundred (1200) acre feet of additional Colorado River water. The Salt and Verde River water that we are giving up is from the most secure and inexpensive supplies of the City. In exchange, we will receive water that is somewhat more expensive and will be a less secure supply. However, we believe the sacrifice is worth the price.

Without this settlement we face many years of expensive litigation and uncertainty about our water future. The settlement of these claims will allow Scottsdale to plan for its future development in cooperation with the Indian Community. The increased certainty about our water resources will assure continued economic stability for our City.

In conclusion, on behalf of the City of Scottsdale, I urge the Committees to support the legislation that will enable this settlement to take place.